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Federal Acquisition Regulations System

48

CHAPTER 2 (201-299)

Revised as of October 1, 1997

CONTAINING
A CODIFICATION OF DOCUMENTS
OF GENERAL APPLICABILITY
AND FUTURE EFFECT

AS OF OCTOBER 1, 1997

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As of October 1, 1997
Title 48, Chapter 2, Parts 201 to 251,
and
Title 48, Chapter 2, Parts 252 to 299
Revised as of July 1, 1996
Are Replaced by
Title 48, Chapter 2
Parts 201 to 299

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Cite this Code: CFR

To cite the regulations in this volume use title, part and section number. Thus, 48 CFR 201.103 *refers to title 48, part 201, section 103.*

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16.....as of January 1
Title 17 through Title 27.....as of April 1
Title 28 through Title 41.....as of July 1
Title 42 through Title 50.....as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

HOW TO USE THE CODE OF FEDERAL REGULATIONS

The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

To determine whether a Code volume has been amended since its revision date (in this case, October 1, 1997), consult the ''List of CFR Sections Affected (LSA),'' which is issued monthly, and the ''Cumulative List of Parts Affected,'' which appears in the Reader Aids section of the daily Federal Register. These two lists will identify the Federal Register page number of the latest amendment of any given rule.

EFFECTIVE AND EXPIRATION DATES

Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cutoff date for the Code a note has been inserted to reflect the future effective date. In those instances where a regulation published in the Federal Register states a date certain for expiration, an appropriate note will be inserted following the text.

OMB CONTROL NUMBERS

The Paperwork Reduction Act of 1980 (Pub. L. 96–511) requires Federal agencies to display an OMB control number with their information collection request.

Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

OBSOLETE PROVISIONS

Provisions that become obsolete before the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on a given date in the past by using the appropriate numerical list of sections affected. For the period before January 1, 1986, consult either the List of CFR Sections Affected, 1949–1963, 1964–1972, or 1973–1985, published in seven separate volumes. For the period beginning January 1, 1986, a ''List of CFR Sections Affected'' is published at the end of each CFR volume.

CFR INDEXES AND TABULAR GUIDES

A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I), and Acts Requiring Publication in the Federal Register (Table II). A list of CFR titles, chapters, and parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of ''Title 3—The President'' is carried within that volume.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the ''Contents'' entries in the daily Federal Register.

A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.

REPUBLICATION OF MATERIAL

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For a legal interpretation or explanation of any regulation in this volume, contact the issuing agency. The issuing agency's name appears at the top of odd–numbered pages.

For inquiries concerning CFR reference assistance, call 202–523–5227 or write to the Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408.

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RAYMOND A. MOSLEY,
Director,
Office of the Federal Register.

October 1, 1997.

THIS TITLE

Title 48—FEDERAL ACQUISITION REGULATIONS SYSTEM is composed of eight volumes. The chapters in these volumes are arranged as follows: Chapter 1 (parts 1 to 51), chapter 1 (parts 52 to 99), chapter 2 (parts 201 to 299), chapters 3 to 6, chapters 7 to 14, chapters 15 to 28 and chapter 29 to end. The contents of these volumes represent all current regulations codified under this title of the CFR as of October 1, 1997.

The Federal acquisition regulations in chapter 1 are those government-wide acquisition regulations jointly issued by the General Services Administration, the Department of Defense, and the National Aeronautics and Space Administration. Chapters 2 through 99 are acquisition regulations issued by individual government agencies. Parts 1 to 69 in each of chapters 2 through 99 are reserved for agency regulations *implementing* the Federal acquisition regulations in chapter 1 and are numerically keyed to them. Parts 70 to 99 in chapters 2 through 99 contain agency regulations *supplementing* the Federal acquisition regulations.

The OMB control numbers for the Federal Acquisition Regulations System appear in section 1.106 of chapter 1. For the convenience of the user section 1.106 is reprinted in the Finding Aids section of the second volume containing chapter 1 (parts 52 to 99).

The first volume, containing chapter 1 (parts 1 to 51), includes an index to the Federal acquisition regulations.

For this volume, Ann Elise Maso was Chief Editor. The Code of Federal Regulations publication program is under the direction of Frances D. McDonald, assisted by Alomha S. Morris.

Would you like to know...

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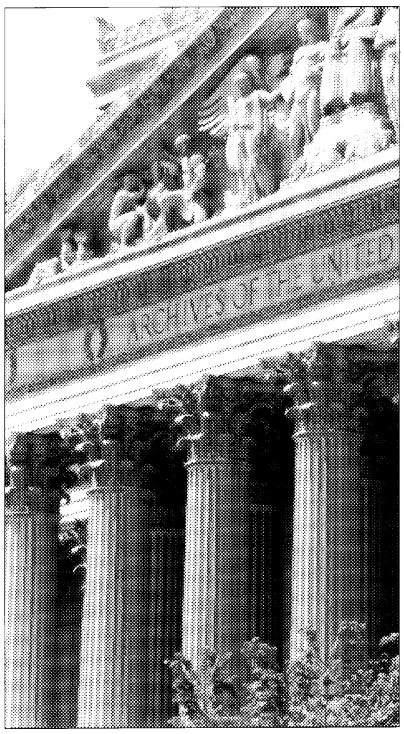

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The *LSA* (List of CFR Sections Affected) is designed to lead users of the *Code of Federal Regulations* to amendatory actions published in the *Federal Register*. The *LSA* is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected.
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Title 48—Federal Acquisition Regulations System

(This book contains chapter 2, parts 201 to 299)

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CHAPTER 2—DEPARTMENT OF DEFENSE

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Department of Defense

NOTE: Although the text of Manuals and Supplements to the Defense FAR Supplement are not published in the Code of Federal Regulations, they were listed for the convenience of the user. All of the Supplements have been deleted. The only manuals which remain in effect are: Armed Services Pricing Manual (1986) and Armed Services Pricing Manual, Volume 2, Price Analysis (1987).

SUBCHAPTER A—GENERAL

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

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AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36284, July 31, 1991, unless otherwise noted.

Subpart 201.1—Purpose, Authority, Issuance

201.103 Applicability.

The FAR and the Defense Federal Acquisition Regulation Supplement (DFARS) also apply to purchases and contracts by DoD contracting activities made in support of foreign military sales or North Atlantic Treaty Organization cooperative projects without regard to the nature or sources of funds obligated, unless otherwise specified in this regulation.

201.104 Issuance.

201.104–3 Copies.

Copies of the DFARS in loose-leaf and CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325. Purchase of a copy of DFARS includes a subscription for Defense Acquisition Circulars.

Subpart 201.2—Administration

201.201 Maintenance of the FAR.

201.201–1 The two councils.

(c) The composition and operation of the DAR Council is prescribed in DoD Directive 5000.35, Defense Acquisition Regulatory System.

(d)(i) Departments and agencies process proposed revisions of FAR or DFARS through channels to the Director of the DAR Council. Process the proposed revision as a memorandum in the following format, addressed to the Director, DAR Council, OUSD(A&T), 3062 Defense Pentagon, Washington, DC 20301–3062; datafax (703) 602–0350:

I. Problem: Succinctly state the problem created by current FAR and/or DFARS coverage and describe the factual and/or legal reasons necessitating regulatory change.

II. Recommendation: Identify the FAR and/or DFARS citations to be revised. Attach as TAB A a copy of the text of the existing coverage, conformed to include the proposed additions and deletions. Indicate deleted coverage with dashed lines through the current words being deleted and insert proposed language in brackets at the appropriate locations within the existing coverage. If the proposed deleted portion is extensive, it may be outlined by lines forming a box with diagonal lines drawn connecting the corners.

III. Discussion: Include a complete, convincing explanation of why the change is necessary and how the recommended revision will solve the problem. Address advantages and disadvantages of the proposed revision, as well as any cost or administrative impact on Government activities and contractors. Identify any potential impact of the change on automated systems, e.g., automated financial and procurement systems. Provide any other background information that would be helpful in explaining the issue.

IV. Collaterals: Address the need for public comment (FAR 1.301(b) and subpart 1.5), the Paperwork Reduction Act, and the Regulatory Flexibility Act (FAR 1.301(c)).

V. Deviations: If a recommended revision of DFARS is a FAR deviation, identify the deviation and include under separate TAB a justification for the deviation, which addresses the requirements of 201.402(3). The justification should be in the form of a memorandum for the USD(A&T)DP.

(ii) The public may offer proposed revisions of FAR or DFARS by submission of a memorandum, in the format (including all of the information) prescribed in paragraph (d)(i) of this subsection, to the Director of the DAR Council.

[56 FR 36284, July 31, 1991, as amended at 60 FR 61591, Nov. 30, 1995; 61 FR 50451, Sept. 26, 1996]

Subpart 201.3—Agency Acquisition Regulations

201.301 Policy.

(a) DoD implementation and supplementation of the FAR is issued in the Defense Federal Acquisition Regulation Supplement (DFARS) under authorization and subject to the authority, direction, and control of the Secretary of Defense.

(b) When FEDERAL REGISTER publication is required for any policy, procedure, clause, or form, the department or agency requesting USD(A&T) approval for use of the policy, procedure, clause, or form (see 201.304(1)) must include an analysis of the public comments in the request for approval.

[56 FR 36284, July 31, 1991, as amended at 60 FR 61591, Nov. 30, 1995]

201.303 Publication and codification.

(a)(i) The DFARS is codified under chapter 2 in title 48, Code of Federal Regulations.

(ii) To the extent possible, all DFARS text (whether implemental or supplemental) is numbered as if it were implemental. Supplemental numbering is used only when the text cannot be integrated intelligibly with its FAR counterpart.

(A) Implemental numbering is the same as its FAR counterpart, except when the text exceeds one paragraph, the subdivisions are numbered by skipping a unit in the FAR 1.104–2(b)(2) prescribed numbering sequence. For example, three paragraphs implementing FAR 19.501 would be numbered 219.501 (1), (2), and (3) rather than (a), (b), and (c). Three paragraphs implementing FAR 19.501(a) would be numbered 219.501(a) (i), (ii), and (iii) rather than (a) (1), (2), and (3). Further subdivision of the paragraphs follows the prescribed numbering sequence, e.g., 219.501(1)(i)(A)(*1*)(*i*).

(B) Supplemental numbering is the same as its FAR counterpart, with the addition of a number of 70 and up or (S–70) and up. Parts, subparts, sections, or subsections are supplemented by the addition of a number of 70 and up. Lower divisions are supplemented by the addition of a number of (S–70) and up. When text exceeds one paragraph, the subdivisions are numbered using the FAR 1.104–2(b)(2) prescribed sequence, without skipping a unit. For example, DFARS text supplementing FAR 19.501 would be numbered 219.501–70. Its subdivisions would be numbered 219.501–70 (a), (b), and (c).

(C) Subdivision numbering below the 4th level does not repeat the numbering sequence. It uses italicized Arabic numbers and then italicized lower case Roman numerals.

(D) An example of DFARS numbering is in Table 1–1, DFARS Numbering.

(iii) Department/agency and component supplements must parallel the FAR and DFARS numbering, except department/agency supplemental numbering uses subsection numbering of 90 and up, instead of 70 and up.

TABLE 1–1—DFARS NUMBERING

FAR	Is implemented as	Is supplemented as
19	219	219.70
19.5	219.5	219.570
19.501	219.501	219.501–70
19.501–1	219.501–1	219.501–1–70
19.501–1(a)	219.501–1(a)	219.501–1(a)(S–70)
19.501–1(a)(1)	219.501–1(a)(1)	219.501–1(a)(1)(S–70)

201.304 Agency control and compliance procedures.

Departments/agencies and their component organizations may issue acquisition regulations as necessary to implement or supplement the FAR or DFARS.

(1) Approval of the USD(A&T) is required, before inclusion in a department/agency or component supplement or any other contracting regulatory document such as a policy letter, or clause book, of any policy, procedure, clause, or form which—

(i) Has a significant effect beyond the internal operating procedures of the agency; or

(ii) Has a significant cost or administrative impact on contractors or offerors.

(2) The USD(A&T) has delegated authority to the USD(A&T)DP to approve or disapprove the policies, procedures, clauses, and forms subject to paragraph (1) of this section.

(3) Approval of USD(A&T)DP is required for any class deviation (as defined in FAR subpart 1.4) from the FAR or DFARS, before its inclusion in a department/agency or component supplement or any other contracting regulatory document such as a policy letter or clause book.

(4) Each department and agency shall develop and, upon approval by USD(A&T)DP, implement, maintain, and comply with a plan for controlling the use of clauses other than those prescribed by FAR or DFARS.

(5) Departments/agencies submit requests for the USD(A&T) and USD(A&T)DP approvals required by this section through the Director of the DAR Council.

(6) Revisions to the DFARS are issued through Defense Acquisition Circulars or Departmental Letters.

(i) Defense Acquisition Circulars—

(A) Are issued on a quarterly basis to all recipients of the DFARS.

(B) Are published in the FEDERAL REGISTER.

(C) Include, in addition to DFARS revisions, policies, directives, and informational items.

(D) Include the effective dates for use of the revisions, policies, or directives. The effective date means the date on which the revisions, policies, or directives must be applied. Unless stated otherwise in the circular, any new or revised clauses, provisions, or forms must be included in solicitations issued on or after that date.

(ii) Departmental Letters—

(A) Are issued as necessary to the departments and agencies when time is of essence in disseminating a revision, policy, or directive.

(B) Are effective until the revision, policy, or directive is superseded by publication of the material in a Federal Acquisition Circular, Defense Acquisition Circular, or other directive or is specifically withdrawn.

[56 FR 36284, July 31, 1991, as amended at 60 FR 61591, Nov. 30, 1995]

Subpart 201.4—Deviations From the FAR

201.402 Policy.

(1) The Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition & Technology), USD(A&T)DP, is the approval authority within the DoD for—

(i) Any individual deviation from—

(A) FAR/DFARS Section 3.104, Procurement integrity;

(B) FAR/DFARS Subpart 27.4, Rights in Data and Copyrights;

(C) FAR/DFARS Subpart 31.1, Applicability (contract cost principles);

(D) FAR/DFARS Subpart 31.2, Contracts with Commercial Organizations; or

(E) FAR/DFARS Part 32, Contract Financing (except 32.7, 32.8, and the payment clauses prescribed by 32.1).

(ii) Any class deviation.

(2) Individual deviations.

(i) Except as provided in paragraph (2)(ii) of this section, individual deviations, other than those in paragraph (1)(i) of this section, must be approved in accordance with the department/agency plan prescribed by 201.304(4).

(ii) Contracting officers outside the United States are authorized to deviate from prescribed non-statutory FAR and DFARS clauses when contracting for support services, supplies, or construction, with the governments of North Atlantic Treaty Organization (NATO) countries or other allies (as described in 10 U.S.C. 2341(2)), or with United Nations or NATO organizations.

This authority shall be exercised only if such governments or organizations will not agree to the standard clauses.

(3) Submit requests for deviation approval through department/agency channels to the approval authority in paragraph (1) or (2), as appropriate. Submit deviations which require USD(A&T)DP approval through the Director of the DAR Council. At a minimum, each request must—

(i) Identify the department/agency, and component if applicable, requesting the deviation;

(ii) Identify the FAR or DFARS citation from which a deviation is needed, state what is required by that citation, and indicate whether an individual or class deviation is requested;

(iii) Describe the deviation and indicate which of paragraphs (a) through (f) of FAR 1.401 best categorizes the deviation.

(iv) State whether the deviation will have a significant effect beyond the internal operating procedures of the agency and/or a significant cost or administrative impact on contractors or offerors, and give reasons to support the statement;

(v) State the period of time for which the deviation is required;

(vi) State whether approval for the same deviation has been received previously, and if so, when;

(vii) State whether the proposed deviation was published (see FAR subpart 1.5 for publication requirements) in the FEDERAL REGISTER and provide analysis of comments;

(viii) State whether the request for deviation has been reviewed by legal counsel, and if so, state results; and

(ix) Give detailed rationale for the request. State what problem or situation will be avoided, corrected, or improved if request is approved.

[56 FR 36284, July 31, 1991, as amended at 60 FR 61591, Nov. 30, 1995; 61 FR 50451, Sept. 26, 1996]

201.403 Individual deviations.

See approval requirements in 201.402.

201.404 Class deviations.

See approval requirements in 201.402.

Subpart 201.6—Contracting Authority and Responsibilities

201.602 Contracting officers.

201.602–2 Responsibilities.

Contracting officers may designate qualified personnel as their authorized representatives to assist in the technical monitoring or administration of a contract. A contracting officer's representative (COR)—

(1) Must be a Government employee, unless otherwise authorized in agency regulations.

(2) Must be qualified by training and experience commensurate with the responsibilities to be delegated in accordance with department/agency guidelines.

(3) May not be delegated responsibility to perform functions at a contractor's location that have been delegated under FAR 42.202(a) to a contract administration office.

(4) May not be delegated authority to make any commitments or changes that affect price, quality, quantity, delivery, or other terms and conditions of the contract.

(5) Must be designated in writing, and a copy furnished the contractor and the contract administration office,—

(i) Specifying the extent of the COR's authority to act on behalf of the contracting officer;

(ii) Identifying the limitations on the COR's authority;

(iii) Specifying the period covered by the designation;

(iv) Stating the authority is not redelegable; and

(v) Stating that the COR may be personally liable for unauthorized acts.

(6) Must maintain a file for each contract assigned. This file must include, as a minimum—

(i) A copy of the contracting officer's letter of designation and other documentation describing the COR's duties and responsibilities; and

(ii) Documentation of actions taken in accordance with the delegation of authority.

201.602–70 Contract clause.

Use the clause at 252.201–7000, Contracting Officer's Representative, in solicitations and contracts when appointment of a contracting officer's representative is anticipated.

201.603 Selection, appointment, and termination of appointment.

201.603–2 Selection.

(1) Pursuant to 10 U.S.C. 1724, in order to qualify to serve as a contracting officer with authority to award or administer contracts for amounts above the simplified acquisition threshold, a person must—

(i) Have completed all mandatory contracting courses required for a contracting officer at the grade level, or in the position within the grade of the General Schedule in which the person is serving;

(ii) Have at least two years experience in a contracting position;

(iii) Have—

(A) Received a baccalaureate degree from an accredited educational institution;

(B) Completed at least 24 semester credit hours, or equivalent, of study from an accredited institution of higher education in any of the following disciplines: Accounting, business finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, and organization and management; or

(C) Passed an examination considered to demonstrate skills, knowledge, or abilities comparable to that of an individual who has completed at least 24 semester credit hours, or equivalent, of study from an accredited institution of higher education in any of the disciplines in paragraph (1)(iii)(B) of this subsection; and

(iv) Meet such additional requirements, based on the dollar value and complexity of the contracts awarded or administered in the position as may be established by the Secretary of Defense.

(2) The requirements in 201.603–2(1)(iii) do not apply to any employee who, as of October 1, 1991, had at least 10 years experience in acquisition positions, in comparable positions in other government agencies or the private sector, or in similar positions in which the individual obtained experience directly relevant to the field of contracting.

(3) The requirements in 201.603–2(1) do not apply to any employee for purposes of qualifying to serve in the position in which the employee is serving on October 1, 1993, or any other position in the same grade and involving the same level of responsibilities as the position in which the employee is serving on that date.

(4) Waivers may be authorized. Information on waivers is contained in DoD Manual 5000.52–M, Career Development Program for Acquisition Personnel.

[58 FR 28463, May 13, 1993, as amended at 62 FR 34121, June 24, 1997]

201.603–3 Appointment.

Certificates of Appointment executed under the Armed Services Procurement Regulation or the Defense Acquisition Regulation have the same effect as if they had been issued under FAR.

PART 202—DEFINITIONS OF WORDS AND TERMS

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

Subpart 202.1—Definitions

202.101 Definitions.

Contracting activity for DoD also means elements designated by the director of a defense agency which has been delegated contracting authority through its agency charter. DoD contracting activities are—

DEPARTMENT OF DEFENSE

Real Estate and Facilities Directorate, Washington Headquarters Services
Defense Evaluation Support Activity
Department of Defense Office of Dependents Schools
Office of Civilian Health and Medical Program of the Uniformed Services

ARMY

Contract Support Agency
Office of the Deputy Chief of Staff for Procurement, Headquarters, U.S. Army Materiel Command
Armament Munitions and Chemical Command

Missile Command
Research Laboratory
Communications-Electronics Command
Troop Support Agency
Troop Support Command
Tank-Automotive Command
Aviation Systems Command
Training and Doctrine Command
Test and Evaluation Command
Forces Command
Health Services Command
Military District of Washington
U.S. Army, Europe
National Guard Bureau
Corps of Engineers
Information Systems Command
Medical Research and Development Command
U.S. Army, Pacific
Military Traffic Management Command
Space and Strategic Defense Command
Eighth U.S. Army
Depot System Command
Intelligence and Security Command
U.S. Army South
Defense Supply Service—Washington
Directorate of Information Systems for Command, Control, Communications and Computers, Office of the Secretary of the Army
U.S. Army Special Operations Command

NAVY

Deputy, Acquisition and Business Management, Office of the Assistant Secretary of the Navy (Research, Development, and Acquisition)
Directorate of Procurement Policy, Office of the Assistant Secretary of the Navy (Research, Development, and Acquisition)
Naval Air Systems Command
Space and Naval Warfare Systems Command
Naval Facilities Engineering Command
Naval Inventory Control Point
Naval Sea Systems Command
Naval Supply Systems Command
Office of Naval Research
Military Sealift Command
Strategic Systems Programs
Headquarters, U.S. Marine Corps
Marine Corps Systems Command
Installations and Logistics, Headquarters, U.S Marine Corps

AIR FORCE

Office of the Deputy Assistant Secretary (Contracting)
Air Force Materiel Command
Air Combat Command
Air Mobility Command
Air Education and Training Command
Pacific Air Forces
United States Air Forces in Europe
Air Force Space Command

DEFENSE ADVANCED RESEARCH PROJECTS AGENCY

Office of the Deputy Director, Management

Defense Finance and Accounting Service External Services, Defense Finance and Accounting Service

DEFENSE INFORMATION SYSTEMS AGENCY

Defense Information Technology Contracting Organization

DEFENSE INTELLIGENCE AGENCY

Office of Procurement

DEFENSE LOGISTICS AGENCY

Office of the Executive Director, Contract Management
Office of the Executive Director, Contracting
Defense Supply Centers
Defense Personnel Support Center

NATIONAL IMAGERY AND MAPPING AGENCY

Procurement and Contracting Office

DEFENSE SPECIAL WEAPONS AGENCY

Headquarters, Defense Special Weapons Agency

NATIONAL SECURITY AGENCY

Headquarters, National Security Agency

ON-SITE INSPECTION AGENCY

Acquisition Management Office

BALLISTIC MISSILE DEFENSE ORGANIZATION

Headquarters, Ballistic Missile Defense Organization

UNITED STATES SPECIAL OPERATIONS COMMAND

Headquarters, United States Special Operations Command

Contracting officer's representative means an individual designated and authorized in writing by the contracting officer to perform specific technical or administrative functions.

Departments and agencies, as used in DFARS, means the military departments and the defense agencies. The military departments are the Departments of the Army, Navy, and Air Force (the Marine Corps is a part of the Department of the Navy). The defense agencies are the Defense Advanced Research Projects Agency, the Defense Commissary Agency, the Defense Finance and Accounting Service, the Defense Information Systems Agency, the Defense Intelligence Agency, the Defense Investigative Service, the Defense Logistics Agency, the National

Imagery and Mapping Agency, the Defense Special Weapons Agency, the National Security Agency, the On-Site Inspection Agency, the Ballistic Missile Defense Organization, and the United States Special Operations Command.

Department of Defense (DoD), as used in DFARS, means the Department of Defense, the military departments, and the defense agencies.

Executive agency means for DoD, the Department of Defense, the Department of the Army, the Department of the Navy, and the Department of the Air Force.

Head of the agency, means for DoD, the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force. Subject to the direction of the Secretary of Defense, the Under Secretary of Defense (Acquisition), and the Director of Defense Procurement, the directors of the defense agencies have been delegated authority to act as head of the agency for their respective agencies (i.e., to perform functions under the FAR or DFARS reserved to a head of agency or agency head), except for such actions that by terms of statute, or any delegation, must be exercised within the Office of the Secretary of Defense.

Senior procurement executive, means for DoD—

Department of Defense (including the defense agencies)—Under Secretary of Defense (Acquisition & Technology);

Department of the Army—Assistant Secretary of the Army (Research, Development and Acquisition);

Department of the Navy—Assistant Secretary of the Navy (Research, Development and Acquisition);

Department of the Air Force—Assistant Secretary of the Air Force (Acquisition).

The directors of the defense agencies have been delegated authority to act as senior procurement executive for their respective agencies, except for such actions that by terms of statute, or any delegation, must be exercised by the Under Secretary of Defense (Acquisition & Technology).

[56 FR 36287, July 31, 1991, as amended at 56 FR 67212, Dec. 30, 1991; 57 FR 42629, Sept. 15, 1992; 59 FR 27668, May 27, 1994; 60 FR 29497, June 5, 1995; 60 FR 61591, Nov. 30, 1995; 61 FR 7741, Feb. 29, 1996; 61 FR 50451, Sept. 26, 1996; 62 FR 34121, June 24, 1997]

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Sec.

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203.103 Independent pricing.
203.103–2 Evaluating the certification.
203.104 Procurement integrity.
203.104–5 Disclosure of proprietary and source selection information.

Subpart 203.2—Contractor Gratuities to Government Personnel

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Subpart 203.5—Other Improper Business Practices

203.502 Subcontractor kickbacks.
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203.570 Employment prohibitions on persons convicted of fraud or other DoD contract-related felonies.
203.570–1 Scope.
203.570–2 Policy.
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203.570–5 Contract clause.

Subpart 203.7—Voiding and Rescinding Contracts

203.703 Authority.

Subpart 203.70—Contractor Standards of Conduct

203.7000 Policy.

203.7001 Procedures.
203.7002 Contract clause.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36288, July 31, 1991, unless otherwise noted.

Subpart 203.1—Safeguards

203.103 Independent pricing.

203.103–2 Evaluating the certification.

(b)(3) The contracting officer also shall report the matter in accordance with 209.406–3 and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.

203.104 Procurement integrity.

203.104–5 Disclosure of proprietary and source selection information.

(d)(4) For purposes of FAR 3.104–5(d)(4) only, DoD follows the notification procedures in FAR 27.404(h). However, the first sentence in FAR 27.404(h) does not apply to DoD.

[56 FR 36288, July 31, 1991, as amended at 62 FR 2612, Jan. 17, 1997]

Subpart 203.2—Contractor Gratuities to Government Personnel

203.203 Reporting suspected violations of the Gratuities clause.

Report suspected violations of the Gratuities clause in accordance with 209.406–3 and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.

Subpart 203.3—Reports of Suspected Antitrust Violations

203.301 General.

(b) Report suspected antitrust violations in accordance with 209.406–3 and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.

Subpart 203.4—Contingent Fees

203.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

(b) Report suspected fraud or other criminal conduct in accordance with 209.406–3 and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.

[56 FR 36288, July 31, 1991. Redesignated at 62 FR 34121, June 24, 1997]

Subpart 203.5—Other Improper Business Practices

203.502 Subcontractor kickbacks.

Report suspected violations of the Anti-Kickback Act in accordance with 209.406–3 and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.

203.502–2 General.

(h) The DoD Inspector General has designated Special Agents of the following investigative organizations as representatives for conducting inspections and audits under the Anti-Kickback Act of 1986:

(i) U.S. Army Criminal Investigation Command.

(ii) Naval Criminal Investigative Service.

(iii) Air Force Office of Special Investigations.

(iv) Defense Criminal Investigative Service.

[56 FR 36288, July 31, 1991, as amended at 60 FR 29497, June 5, 1995]

203.570 Employment prohibitions on persons convicted of fraud or other DoD contract-related felonies.

203.570–1 Scope.

This subpart prescribes policies and procedures to implement 10 U.S.C. 2408.

203.570–2 Policy.

(a) Contractors or subcontractors shall not knowingly allow a person, convicted after September 29, 1988, of fraud or any other felony arising out of a contract with the DoD, to serve—

(1) In a management or supervisory capacity on any DoD contract or first-tier subcontract; or,

(2) On its board of directors; or

(3) As a consultant, agent, or representative.

(b) The period covered by the prohibition in paragraph (a) of this subsection is for five years from the date of conviction unless waived in the interest of national security by the agency head or designee.

203.570–3 Waiver.

(a) The contracting officer shall—

(1) Review any request for waiver; and

(2) Deny the request if the contracting officer decides the waiver is not required in the interests of national security; or

(3) Forward the request to the head of the agency or designee for approval if the contracting officer decides the waiver may be in the interest of national security.

(b) The head of the agency or designee shall report all waivers granted, and the reasons for granting the waiver, to the Under Secretary of Defense (Acquisition), who will forward the report to Congress as required by 10 U.S.C. 2408(a)(3).

203.570–4 Reporting.

When a Defense contractor or first-tier subcontractor is found in violation of the prohibition in 203.570–2, the contracting officer shall report the matter in accordance with 209.406–3 and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.

203.570–5 Contract clause.

Use the clause at 252.203–7001, Special Prohibition on Employment, in all solicitations and contracts exceeding the simplified acquisition threshold, except solicitations and contracts for commercial items.

[60 FR 61592, Nov. 30, 1995, as amended at 62 FR 34121, June 24, 1997]

Subpart 203.7—Voiding and Rescinding Contracts

203.703 Authority.

The authority to act for the agency head under this subpart is limited to a level no lower than an official who is appointed by and with the advice of the Senate, without power of redelegation. For the defense agencies, for purposes of this subpart, the agency head designee is the Under Secretary of Defense (Acquisition & Technology).

[56 FR 36288, July 31, 1991, as amended at 60 FR 61592, Nov. 30, 1995]

Subpart 203.70—Contractor Standards of Conduct

203.7000 Policy.

Government contractors must conduct themselves with the highest degree of integrity and honesty. Contractors should have standards of conduct and internal control systems that—

(1) Are suitable to the size of the company and the extent of their involvement in Government contracting,

(2) Promote such standards,

(3) Facilitate timely discovery and disclosure of improper conduct in connection with Government contracts, and

(4) Ensure corrective measures are promptly instituted and carried out.

203.7001 Procedures.

(a) A contractor's system of management controls should provide for—

(1) A written code of business ethics and conduct and an ethics training program for all employees;

(2) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with standards of conduct and the special requirements of Government contracting;

(3) A mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports;

(4) Internal and/or external audits, as appropriate;

(5) Disciplinary action for improper conduct;

(6) Timely reporting to appropriate Government officials of any suspected or possible violation of law in connection with Government contracts or any other irregularities in connection with such contracts; and

(7) Full cooperation with any Government agencies responsible for either investigation or corrective actions.

(b) Contractors who are awarded a DoD contract of $5 million or more must display DoD Hotline Posters prepared by the DoD Office of the Inspector General unless—

(1) The contract will be performed in a foreign country; or

(2) The contractor has established an internal reporting mechanism and program, as described in paragraph (a) of this section.

203.7002 Contract clause.

Use the clause at 252.203–7002, Display of DoD Hotline Poster, in solicitations and contracts expected to exceed $5 million, except when performance will take place in a foreign country.

PART 204—ADMINISTRATIVE MATTERS

Sec.

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204.804 Closeout of contract files.
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204.7000 Scope.
204.7001 Policy.
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204.7102 Policy.
204.7103 Contract line items.
204.7103–1 Criteria for establishing.
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204.7104–1 Criteria for establishing.
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204.7105 Contract exhibits and attachments.
204.7106 Contract modifications.
204.7107 Contract accounting classification reference number (ACRN).

Subpart 204.72—Contractor Identification

204.7200 Scope of subpart.
204.7201 Definitions.
204.7202 General.
204.7202–1 CAGE codes.
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204.7202–3 Taxpayer identification numbers.
204.7203 Responsibilities of contracting officers.
204.7204 Maintenance of the CAGE file.
204.7205 Novation agreements, mergers and sales of assets.
204.7206 Using CAGE codes to identify agents and brokers.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36289, July 31, 1991, unless otherwise noted.

Subpart 204.1—Contract Execution

204.101 Contracting officer's signature.

(a)(i) Include the contracting officer's telephone number on contracts and modifications.

(ii) The contracting officer may sign bilateral modifications of a letter contract before signature by the contractor.

Subpart 204.2—Contract Distribution

204.201 Procedures.

(1) The procuring contracting officer (PCO) retains the original signed contract for the official contract file. Administrative contracting officers and terminations contracting officers provide the original of each modification to the PCO for retention in the official contract file. Unless otherwise directed by department/agency procedures, the office issuing the orders maintains the original of orders under basic ordering agreements and the original of provisioning orders.

(2) Ensure that distribution of contracts and modifications is consistent with security directives.

(e)(i) Distribute one copy of each of the following types of contracts or modifications to the appropriate Defense Contract Audit Agency (DCAA) field audit office (listed in the DCAA Directory—Headquarters and Field Offices)—

(A) Cost reimbursement;

(B) Time-and-materials;

(C) Labor-hour;

(D) Fixed price contracts with provisions for redetermination, incentives, economic price adjustment, or cost allowability; and

(E) Any other contract that requires audit service.

(ii) If there is a question as to the appropriate DCAA field audit office, request the assistance of the DCAA procurement liaison auditor or the nearest DCAA field audit office.

(f) Provide two copies to offices performing contract administration support functions.

[56 FR 36289, July 31, 1991, as amended at 59 FR 27668, May 27, 1994]

204.202 Agency distribution requirements.

(1) Distribute copies of contracts as follows—

(i) Four copies to the contract administration office (send simultaneously with the copy furnished under FAR 4.201(b));

(ii) One copy to each consignee indicated in the contract. A transshipping terminal is not a consignee.

(A) Inventory control points that have an automated uniform inventory control point data base that interfaces with consignees may use their automated procedure rather than sending a written copy of the contract. However, when inspection is required at destination, send a written copy to the consignee.

(B) The Defense Logistics Agency is authorized to prescribe alternate procedures for distribution of contract documents in Defense Subsistence Region, Europe;

(iii) Two copies to the military interdepartmental purchase request requiring activity in the case of coordinated acquisition;

(iv) One copy to the contract administration office (CAO) automatic data processing point, except when the DoDAAD code is the same as that of either the CAO or payment office (see DLAH 4105.4, DoD Directory of Contract Administration Services Components); and

(v) One copy, or an extract of the pertinent information, to the cognizant Defense Investigative Service office listed in DoD 5100.76–M, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives, when the clause at 252.223–7007, Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives, is included in the contract.

(2) The activity executing a contract modification shall furnish a copy of the basic contract and all modifications to—

(i) The new and old payment office when adding or changing a payment office;

(ii) The new contract administration office, a new consignee or other activity, based on the extent to which each activity is concerned with the basic contract and modifications.

(3) Distribution of modifications issued to provide initial or amended shipping instructions under 204.7004(c)(3)(iii) and 204.7004(f) may be limited to the following—

(i) Contractor, one copy;

(ii) Receiving activity, one copy each;

(iii) Contract administration office, one copy;

(iv) Payment office, one copy; and

(v) Contract administration office automatic data processing point, one copy.

(4) Distribution of modifications generated by automated means (computer programs) may be limited to the following—

(i) Contractor, one copy;

(ii) Contract administration office, one copy;

(iii) New payment office, one copy;

(iv) Procuring contracting office, one copy;

(v) Funding activities, one copy to each; and

(vi) Consignee, one copy to each.

[56 FR 36289, July 31, 1991, as amended at 61 FR 7742, Feb. 29, 1996]

Subpart 204.4—Safeguarding Classified Information Within Industry

204.402 General.

(1) Subpart 239.74 contains policy and procedures for securing telecommunications between Government agencies and contractors and subcontractors.

(2) Pursuant to section 808 of Pub. L. 102–190, DoD employees or members of the Armed Forces who are assigned to or visiting a contractor facility and are engaged in oversight of an acquisition program will retain control of their work product. Classified work products of DoD employees or members of the Armed Forces shall be handled in accordance with DoD 5220.22–M, Industrial Security Manual, and DoD 5220.22–R, Industrial Security Regulation. Contractor procedures for protecting against unauthorized disclosure of information shall not require DoD employees or members of the Armed Forces to relinquish control of their work products, whether classified or not, to a contractor.

[57 FR 14992, Apr. 23, 1992]

204.404 Contract clause.

204.404–70 Additional contract clauses.

(a) Use the clause at 252.204–7000, Disclosure of Information, in solicitations and contracts when the contractor will have access to or generate unclassified information that may be sensitive and inappropriate for release to the public.

(b) Use the clause at 252.204–7003, Control of Government Personnel Work Product, in all solicitations and contracts.

[57 FR 14992, Apr. 23, 1992]

Subpart 204.6—Contract Reporting

204.600 Scope of subpart.

The Defense Contract Action Data System (DCADS) (see 204.670) is the DoD reporting system which supports the uniform reporting requirements for—

(1) DD Form 350, Individual Contracting Action Report; and

(2) DD Form 1057, Monthly Summary of Actions $25,000 or Less.

204.601 Record requirements.

(a) The DCADS meets these record retention requirements.

(d) The Directorate for Information, Operation, and Reports (DIOR), of the Washington Headquarters Services (WHS) transmits required DoD information to the Federal Procurement Data System.

204.602 Federal Procurement Data System.

(c) DoD uses the DD Form 350, Individual Contracting Action Report, in lieu of the SF 279, Federal Procurement Data System (FPDS) Individual Contract Action Report. DoD uses the DD Form 1057, Monthly Contracting Summary of Actions $25,000 or Less, in lieu of the SF 281, FPDS Summary

Contract Action Report ($25,000 or Less).

204.602–70 Solicitation provision.

When the Commercial and Government Entity codes for the prospective offerors are not available to the contracting office, use the provision at 252.204–7001, Commercial and Government Entity (CAGE) Code Reporting.

[61 FR 61592, Nov. 30, 1995]

204.670 Defense Contract Action Data System (DCADS)

204.670–1 Definitions.

As used in this section and 253.204–70 and 253.204–71—

(a) *Contract administration office* means an office, other than the contracting office, which awards or executes contracting actions on behalf of the contracting office, including actions relating to the settlement of terminated contracts.

(b) *Contracting action* means any written action obligating or deobligating funds in connection with the purchasing, renting, or leasing of supplies, services, or construction. The term does not include grants or cooperative agreements. The term includes, but is not limited to—

(1) Definitive contracts, including notices of award;

(2) Letter contracts;

(3) Purchase orders;

(4) Orders under existing contracts or agreements, e.g.—

(i) Orders against basic ordering agreements, including service orders issued on DD Form 1164 by installation transportation offices;

(ii) Calls against blanket purchase agreements;

(iii) Job orders;

(iv) Task orders;

(v) Delivery orders;

(vi) Communication services authorizations; and

(vii) Notices of termination or cancellation.

(5) Contract modifications, e.g.—

(i) Change orders;

(ii) Supplemental agreements;

(iii) Funding actions; and

(iv) Option exercises.

(c) *Departmental data collection points* are—

(1) For the Army (including Corps of Engineers civil Works): U.S. Army Contracting Support Agency, Attn: SFAE–CSA–PPS, 5109 Leesburg Pike, Suite 916, Falls Church, VA 22041–3201

(2) For the Navy: Fleet Industrial Supply Center, Norfolk Detachment Washington, Attn: PMRS, Washington Navy Yard, Bldg. 200, 4th Floor, 800 M Street, SW, Washington, DC 20374–2004

(3) For the Air Force: SAF/AQCI, 1060 Air Force Pentagon, Washington, DC 20330–1060

(4) For the Defense Logistics Agency: Headquarters, Defense Logistics Agency, Attn: Directorate of Procurement (Acquisition Operations Team), 8725 John J. Kingman Road, Suite 3147, Ft. Belvoir, VA 22060–6221.

(5) For other DoD contracting activities: U.S. Army Contracting Support Agency, Attn: SFAE–CSA–PPS, 5109 Leesburg Pike, Suite 916, Falls Church, VA 22041–3201.

(d) *United States and outlying areas* is defined in Federal Information Processing Standard Publication (FIPS PUB) 55–2, Guideline: Codes for Named Populated Places, Primary County Divisions, and Other Locational Entities of the United States and Outlying Areas. Outlying areas are—

(1) American Samoa;

(2) The Federated States of Micronesia;

(3) Guam;

(4) The Marshall Islands;

(5) Northern Mariana Islands;

(6) The Trust Territory of Palau;

(7) Puerto Rico;

(8) The U.S. Minor Outlying Islands; and

(9) The U.S. Virgin Islands.

[56 FR 36289, July 31, 1991, as amended at 60 FR 61592, Nov. 30, 1995; 61 FR 51030, Sept. 30, 1996; 62 FR 34121, June 24, 1997]

204.670–2 Reportable contracting actions.

(a) Except as provided in paragraph (c) of this subsection, complete a DD Form 350 for—

(1) All contracting actions, including actions executed by DoD for purchase of land, or rental or lease of real property, that obligate or deobligate more than $25,000; and

(2) All contracting actions that obligate or deobligate $25,000 or less if the

action is in a designated industry group under the small business competitiveness demonstration program (See 204.670–9 and FAR subpart 19.10).

(b) Except as provided in paragraph (c) of this subsection, complete a DD Form 1057 for all contracting actions which obligate or deobligate $25,000 or less, including contracting actions reported on a DD Form 350 under paragraph (a)(2) of this subsection.

(c) Summarize on the monthly DD Form 1057, in accordance with the instructions in 253.204–71(a)(3), contracting actions that support a contingency operation (see 213.000) and that obligate or deobligate funds exceeding $25,000 but not exceeding $200,000.

(d) The following contracting actions shall not be reported on either the DD Form 350 or DD Form 1057:

(1) Imprest fund transactions, SF 44 purchases, and micro-purchases obtained through use of the purchase card;

(2) Transactions that cite only nonappropriated funds (Funds held in trust accounts for foreign governments shall be treated as appropriated funds.);

(3) Transactions for purchase of land, or rental or lease of real property, when the General Services Administration (GSA) executes the contracting action;

(4) Orders from GSA stock and the GSA Consolidated Purchase Program;

(5) Transactions that involve Government bills of lading or transportation requests, except orders placed under Regional Storage Management Office's (RSMO) BOAs;

(6) Requisitions transferring supplies within or among the departments or agencies; and

(7) Pursuant to 204.670–6(b), orders placed by other contracting activities against indefinite delivery contracts awarded by the—

(i) Military Sealift Command;

(ii) Defense Fuel Supply Center for petroleum and petroleum products; or

(iii) Defense Supply Center, Richmond, for petroleum products.

[56 FR 36289, July 31, 1991, as amended at 57 FR 53598, Nov. 12, 1992; 60 FR 61592, Nov. 30, 1995; 61 FR 51030, Sept. 30, 1996; 62 FR 34121, June 24, 1997; 62 FR 44222, Aug. 20, 1997]

204.670–3 Contracting office responsibilities.

(a) For DD Form 350, contracting offices—

(1) Prepare the appropriate type of DD Form 350 (see 204.670–6), in accordance with the instructions in 253.204–70, on all reportable contracting actions (see 204.670–2(a)), including actions accomplished by contract administration offices on behalf of the contracting office.

(2) Complete the DD Form 350 in the required format within three working days after the date on which the dollars were actually obligated or deobligated (see 204.670–7). Submit all contracting actions for the calendar month to the departmental data collection point (see 204.670–1(c)) in accordance with departmental/agency procedures, except—

(i) For Defense Fuel Supply Center major petroleum acquisitions which result in multiple awards, the due date is ten working days when permitted by the departmental data collection point;

(ii) For actions executed in the month of September, due dates may be extended ten calendar days when permitted by the departmental data collection point; and

(iii) For actions accomplished by a contract administration office, the due date is three working days after the receipt of the contractual instrument annotated ''DD FORM 350 REPORTING COPY.''

(3) Prepare and submit a corrected or cancelling DD Form 350 as required in accordance with departmental data collection point instructions.

(4) Establish a control system for assigning report numbers to DD Forms 350 (Block A2 of the DD Form 350). The number shall have four positions and may be any combination of alpha or numeric characters. If more than one activity within a contracting office utilizes the same reporting office code, the contracting office shall assign separate blocks of numbers to each activity in order to prevent duplication of report numbers.

(5) Maintain a copy of the DD Form 350 in the contract file, in accordance with departmental/agency procedures.

(b) For DD Form 1057, contracting offices—

(1) Prepare a DD Form 1057, in accordance with the instructions in 253.204–71, covering reportable contracting actions (see 204.670–2(b)), including actions accomplished by contract administration offices on behalf of the contracting office. An installation, base, or other activity may have more than one contracting office code to separate the various types of acquisitions, such as base and central contracting, or RDT&E and non-RDT&E acquisition. Each contracting office with a separate code must submit its own DD Form 1057.

(2) Complete the DD Form 1057 in the required format within three working days after the cutoff of the reporting month (see 204.670–7 for alternate formats). Contracting offices are authorized to cut off the reporting month no earlier than the 25th calendar day. For September only, the cutoff date shall not be later than September 30. Submit the DD Form 1057 to the departmental data collection point in accordance with departmental/agency procedures.

(3) Unless otherwise instructed by the departmental data collection point, do not submit revised DD Form 1057 reports. Include any required corrections or adjustments in following month's report.

[56 FR 36289, July 31, 1991, as amended at 61 FR 51030, Sept. 30, 1996]

204.670–4 Contract administration office responsibilities.

Contract administration offices executing actions subject to DD Form 350 or DD Form 1057 reporting must submit an annotated copy of the contractual instrument to the contracting office so that the contracting office can submit the required report.

(a) For DD Form 350, annotate in the heading of the contractual instrument in large block letters ''DD FORM 350 REPORTING COPY.'' Send the annotated copy to the contracting office within one working day after the action date.

(b) For DD Form 1057, annotate in the heading of the contractual instrument in large block letters ''DD FORM 1057 REPORTING COPY.'' Send the annotated copy with the normal distribution.

204.670–5 Departmental data collection point responsibilities.

Departmental data collection points—

(a) Collect DD Forms 350 and 1057 data provided by their contracting activities;

(b) Electronically record the data in accordance with the instructions for recording and editing developed by WHS–DIOR with the majority agreement of the departments/agencies and prescribed by the Director of Defense Procurement; and

(c) Submit monthly reports (noncumulative) to Washington Headquarters Services, ATTN: DIOR, within 18 days after the close of the reporting period, except the due date for September may be extended for no more than ten days. Reports control symbols, DD–P&L(M) 1014 and DD–P&L(M) 1015, respectively, apply to reports submitted to WHS–DIOR for DD Form 350 actions and DD Form 1057.

[61 FR 51030, Sept. 30, 1996]

204.670–6 Types of DD Form 350 reports.

There are three types of reports—single, consolidated, and multiple.

(a) A single report is one DD Form 350 report per contracting action.

(b) A consolidated report is one DD Form 350 report which combines several contracting actions.

(1) Prepare consolidated reports for—

(i) Air Mobility Command awards for international airlift services. The Command reports these at the end of each operating month with one DD Form 350 for each airlift contract.

(ii) Military Sealift Command awards of indefinite delivery contracts for ocean transportation. The Command reports at the beginning of each fiscal year the estimated value of the orders for that fiscal year on one DD Form 350.

(iii) Defense Fuel Supply Center or Defense Supply Center, Richmond, indefinite delivery contracts for petroleum or petroleum supplies. The Centers, at the time of award, report the estimated value of the orders to be placed against the contract on one DD Form 350.

(iv) Orders placed by the Defense Commissary Agency (DeCA) for resale

items in excess of $25,000. DeCA consolidates the orders monthly and reports the cumulative dollar amounts and actions on one DD Form 350 in accordance with departmental/agency procedures. Defense Logistics Agency activities submit single rather than consolidated reports.

(v) Vouchers processed by the U.S. Army Contracting Command, Europe (USACCE), for the purchase of utilities from municipalities (e.g., gas, electricity, water, sewage, steam, snow removal, and garbage collection). USACCE consolidates these transactions monthly and reports the cumulative dollar amount on one DD Form 350 in accordance with departmental/agency procedures.

(2) Consolidated reports may be prepared in accordance with departmental/agency procedures for orders under communications service agreements for local dial tone services.

(c) A multiple report is more than one DD Form 350 per contracting action. Prepare multiple reports if—

(1) The contracting action includes foreign military sales (FMS) requirements in addition to non-FMS requirements (Block B9 on the DD Form 350). Submit one DD Form 350 report for the FMS requirements and another DD Form 350 report for the non-FMS requirements, except if either of the portions in $25,000 or less, report the $25,000 or less portion on a DD Form 1057 in lieu of a DD Form 350.

(2) The contracting action includes more than one type of contract (Block C5 on the DD Form 350) and the type with the least dollar value exceeds $500,000. Prepare a separate DD Form 350 for each contract type.

[56 FR 36289, July 31, 1991, as amended at 59 FR 27668, May 27, 1994; 60 FR 61592, Nov. 30, 1995; 61 FR 51031, Sept. 30, 1996; 62 FR 49304, Sept. 19, 1997]

204.670–7 Report formats.

Contracting offices submit the signed original DD Forms 350 and 1057, unless the data collection point approves use of an automated facsimile or electronic equivalent containing the information.

204.670–8 Security classification.

Submit DD Forms 350 as unclassified documents. Classified contracts are not exempt from reporting solely because the contract is classified. Contact the appropriate departmental data collection points for special instructions if it is necessary for security reasons to modify coding of all or any individual blocks on the DD Form 350. If contact cannot be made for security reasons, obtain instructions from the Office of the Deputy to the Under Secretary of Defense for Policy Support, ATTN: Director for Special Programs. Telephone number is (703) 614–0578/9 or DSN 224–0578/9.

[61 FR 51031, Sept. 30, 1996]

204.670–9 Reporting of individual contracting actions of $25,000 or less.

Under the Small Business Competitiveness Demonstration Program (see FAR subpart 19.10), contracting actions of $25,000 or less in four designated industry groups must be reported in the same manner as if the actions were in excess of $25,000.

(a) Report contracting actions of $25,000 or less in the designated industry groups on both the DD Form 350 and the DD Form 1057.

(b) The following contracting actions are not subject to the additional DD Form 350 reporting, although they must still be reported on the DD Form 1057:

(1) Contracting actions of $500 or less.

(2) Foreign military sales.

(3) Orders or modifications under a Federal schedule.

(4) Actions with a government agency.

(5) Actions with non-U.S. business firms.

(6) Actions where the place of performance is other than the United States and its outlying areas.

[56 FR 36289, July 31, 1991, as amended at 61 FR 51031, Sept. 30, 1996; 62 FR 34121, June 24, 1997]

Subpart 204.8—Contract Files

204.802 Contract files.

Official contract files shall consist of—

(1) Only original, authenticated or conformed copies of contractual instruments—

(i) *Authenticated copies* means copies that are shown to be genuine in one of two ways—

(A) Certification as true copy by signature of an authorized person; or

(B) Official seal.

(ii) *Conformed copies* means copies that are complete and accurate, including the date signed and the names and titles of the parties who signed them.

(2) Signed or official record copies of correspondence, memoranda, and other documents.

204.804 Closeout of contract files.

Normally, the closeout date for contract files is the date in Block 9d on the DD Form 1594, Contract Completion Statement, or in columns 59–65 on the PK9. If the contracting office must do a major closeout action that will take longer than three months after the date shown in Block 9d of the DD Form 1594, or in columns 59–65 of the PK9—

(1) The closeout date for file purposes will be the date in Block 10e of the DD Form 1594 or the date of the closeout statement executed when the MILSCAP PK9 is received.

(2) The contracting office shall notify the contract administration office of the revised closeout date by either sending a copy of the completed DD Form 1594 or by preparing a MILSCAP Format Identifier PKZ, Contract Closeout Extension.

204.804–1 Closeout by the office administering the contract.

(1) For contracting offices administering their own contracts, locally developed forms or statement of completion may be used instead of the DD Form 1594, Contract Completion Statement. Whichever method is used, the form shall be retained in the official contract file.

(2) For contracts valued above the small purchase threshold, prepare a DD Form 1597, Contract Closeout Check List, (or agency equivalent) to ensure that all required contract actions have been satisfactorily accomplished.

204.804–2 Closeout of the contracting office files if another office administers the contract.

(1) When an office, other than the contracting office, administers the contract, it shall—

(i) Provide the contracting office an interim contract completion statement when the contract is physically completed and accepted. This notice may be in the form of either a DD Form 1594, Contract Completion Statement, or a MILSCAP Format Identifier Interim PK9, Contract Physical Completion. When the DD Form 1594 is used, the contracting officer—

(A) Annotates Block 8, Remarks, with—

(*1*) ''Notice of Physical Completion;''

(*2*) Final acceptance date;

(*3*) Signature of a responsible official; and

(*4*) Date signed.

(B) Does not complete Blocks 9 (b), (c), and (d) at this time;

(ii) Prepare a DD Form 1597, Contract Closeout Check List, if necessary, to determine that all the required actions have been done;

(iii) Initiate DD Form 1593, Contract Administration Completion Record, if necessary to obtain statements from other organizational elements that they have completed the actions they are responsible for; and

(iv) Upon final payment—

(A) Process the DD Form 1594 with Blocks 1 through 9 completed or the MILSCAP Format Identifier PK9 verifying that all contract administration office actions have been done; and

(B) Send the original of the DD Form 1594 or the MILSCAP Format Identifier PK9 to the contracting office, and file a copy in the official contract file.

(2) If the administrative contracting officer (ACO) cannot closeout a contract within the specified time period (see FAR 4.804–1), the ACO must notify the procuring contracting officer (PCO) within 45 days after the expiration of the time period of—

(i) The reasons for the delay; and

(ii) New target date for closeout. If MILSCAP procedures apply, the ACO

shall use the MILSCAP Format Identifier PKX, Unclosed Contract Status, to provide this notice to the PCO.

(3) If the contract still is not closed out by the new target date, the ACO shall again notify the PCO with the reasons for delay and new target date. If MILSCAP procedures apply, continue to use the MILSCAP Format Identifier PKX, Unclosed Contract Status, to provide this notice.

204.805 Disposal of contract files.

(1) The sources of the period for which official contract files must be retained are General Records Schedule 3 (Procurement, Supply, and Grant Records) and General Records Schedule 6 (Accountable Officers' Accounts Records). Copies of the General Records Schedule may be obtained from the National Archives and Records Administration, Washington, DC 20408.

(2) Deviations from the periods cannot be granted by the Defense Acquisition Regulatory Council. Forward requests for deviations to both the General Accounting Office and the National Archives and Records Administration.

(3) Hold completed contract files in the office responsible for maintaining them for a period of 12 months after completion. After the initial 12 month period, send the records to the local records holding or staging area until they are eligible for destruction. If no space is available locally, transfer the files to the General Services Administration Federal Records Center that services the area.

(4) Duplicate or working contract files should contain no originals of materials that properly belong in the official files. Destroy working files as soon as practicable once they are no longer needed.

(5) Retain pricing review files, containing documents related to reviews of the contractor's price proposals, subject to cost or pricing data (see FAR 15.804–2), for six years. If it is impossible to determine the final payment date in order to measure the six year period, retain the files for nine years.

[56 FR 36289, July 31, 1991, as amended at 62 FR 40472, July 29, 1997]

Subpart 204.9—Information Reporting to the Internal Revenue Service

204.902 General.

(b) DoD uses the DD Form 350, Individual Contract Action Report, (see 204.670) to meet these reporting requirements.

Subpart 204.70—Uniform Procurement Instrument Identification Numbers

204.7000 Scope.

This subpart prescribes policies and procedures for assigning numbers to all solicitations, contracts, and related instruments. This subpart—

(a) Does not apply to solicitations or contracts issued by the Defense Commercial Communications Office of the Defense Information Systems Agency; and

(b) Is optional for solicitations and contracts that will be completely administered by the purchasing office or the consignee, except that—

(1) The procurement instrument identification (PII) number, including supplemental modification numbers, shall not exceed 19 characters (excluding hyphens); and

(2) The number shall begin with the purchasing office identifier and the fiscal year in accordance with 204.7003(a)(1) and (2) and appendix G.

[56 FR 36289, July 31, 1991, as amended at 56 FR 67212, Dec. 30, 1991]

204.7001 Policy.

(a) Use the uniform PII numbering system prescribed by this subpart for the solicitation/contract instruments described in 204.7003 and 204.7004.

(b) Retain the basic PII number unchanged for the life of the instrument.

204.7002 Procedures.

(a) In assigning PII numbers—

(1) Use only the alpha-numeric characters, as prescribed in this subpart; and

(2) Do not use the letters ''I'' or ''O,'' except as noted in 204.7003(a)(1)(i) (J) and (K).

(b) If department/agency procedures require other identification on the solicitation, contract, or other related instrument forms, enter it in such a location so as to separate it clearly from the PII number.

(c) Enter the basic PII number, including Federal supply contract numbers and any supplementary numbers, in the spaces provided on the solicitation, contract, or related instrument forms. Separate the major elements by dashes, e.g., N00023–90–D–0009. If there is no space provided on the form, enter the number in the upper right corner of the form and identify what it is (e.g., Supplementary Number N00023–90–F–0120).

204.7003 Basic PII number.

(a) *Elements of a number.* The number consists of 13 alpha-numeric characters grouped to convey certain information.

(1) *Positions 1 through 6.* The first of the six positions, in upper case letters, identify the department/agency and office issuing the instrument.

(i) Department/agency identification:

(A) Department of the Army	DA
(B) Department of the Navy (except Marine Corps).	N
(C) Department of the Air Force	F
(D) Defense Information Systems Agency.	DCA
(E) Defense Logistics Agency	S
(F) Defense Special Weapons Agency.	DSWA
(G) National Imagery and Mapping Agency.	NIMA
(H) Miscellaneous Defense Activities.	MDA
(I) Marine Corps	M
(J) Ballistic Missile Defense Organization.	HQ0006
(K) On Site Inspection Agency	OSIA
(L) Defense Commissary Agency	DECA
(M) United States Special Operations Command.	USZA

(ii) Issuing office identification. The remaining positions are the alpha-numeric characters that identify the issuing office. These characters are in appendix G.

(iii) Use all six positions. If necessary, enter zeros between the department/agency identifier and the issuing office identifier.

(2) *Positions 7 through 8.* The seventh and eighth positions are the last two digits of the fiscal year in which the PII number was assigned.

(3) *Position 9.* Indicate the type of instrument by entering one of the following upper case letters in position nine—

(i) Blanket purchase agreements—A

(ii) Invitations for bids—B

(iii) Contracts of all types except indefinite delivery contracts, facilities contracts, sales contracts, and contracts placed with or through other Government departments or agencies or against contracts placed by such departments or agencies outside the DoD—C

(iv) Indefinite delivery contracts—D

(v) Facilities contracts—E

(vi) Contracting actions placed with or through other Government departments or agencies or against contracts placed by such departments or agencies outside the DoD (including actions with the National Industries for the Blind (NIB), the National Industries for the Severely Handicapped (NISH), and the Federal Prison Industries (UNICOR))—F

(vii) Basic ordering agreements—G

(viii) Agreements, including basic agreements and loan agreements, but excluding basic purchasing agreements, basic ordering agreements, and leases—H

(ix) Do not use—I

(x) Reserved—J

(xi) Short form research contract—K

(xii) Lease agreement—L

(xiii) Purchase orders—manual (assign W when numbering capacity of M is exhausted during the fiscal year)—M

(xiv) Notice of intent to purchase—N

(xv) Do not use—O

(xvi) Purchase order—automated (assign V when numbering capacity of P is exhausted during a fiscal year)—P

(xvii) Request for quotation—manual—Q

(xviii) Request for proposal—R

(xix) Sales contract—S

(xx) Request for quotation—automated (assign U when numbering capacity of T is exhausted during a fiscal year)—T

(xxi) See T—U

(xxii) See P—V

(xxiii) See M—W

(xxiv) Reserved for departmental use—X

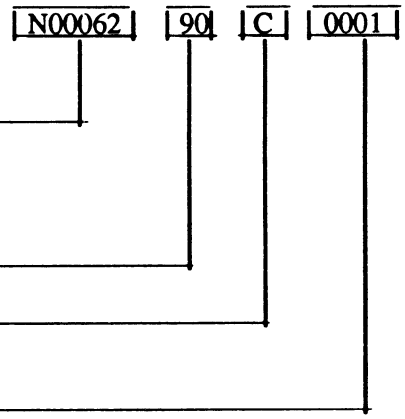
(xxv) Imprest fund—Y

(xxvi) Reserved for departmental use—Z

(4) *Position 10 through 13.* Enter the serial number of the instrument in these positions. A separate series of serial numbers may be used for any type of instrument listed in paragraph (a)(3) of this section. Activities shall assign such series of PII numbers sequentially. An activity may reserve blocks of numbers or alpha-numeric numbers for use by its various components.

(b) *Illustration of PII number.* The following illustrates a properly configured PII number—

Position	Contents
1-6	Identification of department/agency office
7-8	Last two digits of the fiscal year in which the PII number is assigned
9	Type of instrument
10-13	Four position serial number



[56 FR 36289, July 31, 1991, as amended at 56 FR 67212, Dec. 30, 1991; 59 FR 27668, May 27, 1994; 60 FR 61592, Nov. 30, 1995; 61 FR 50451, Sept. 26, 1996; 62 FR 34121, June 24, 1997]

204.7004 Supplementary PII numbers.

(a) *Uses of the supplementary number.* Use supplementary numbers with the basic PII number, to identify—

(1) Amendments to solicitations;

(2) Modifications to contracts and agreements, including provisioned item orders; and

(3) Calls or orders under contracts, basic ordering agreements, or blanket purchase agreements, issued by the contracting office or by a DoD activity other than the contracting office, including DoD orders against Federal supply schedules.

(b) *Amendments to solicitations.* Number amendments to solicitations sequentially using a four position numeric serial number added to the basic PII number and beginning with 0001, e.g., N00062–91–R–1234–0001.

(c) *Modifications to contracts and agreements.* (1) Number modifications to contracts and agreements using a six position alpha-numeric added to the basic PII number.

(2) *Position 1.* Identify the office issuing the modification—

(i) Contract administration office—A

(ii) Contracting office—P

(3) *Positions 2 through 3.* These are the first two digits in a serial number. They may be either alpha or numeric. Use the letters K, L, M, N, P, Q, S, T, U, V, W, X, Y, or Z only in the second position and only in the following circumstances—

(i) Use K, L, M, N, P, and Q in the second position only if the modification is issued by the Air Force and is a provisioned item order.

(ii) Use S, and only S, in the second position to identify modifications issued to provide initial or amended shipping instructions when—

(A) The contract has either FOB origin or destination delivery terms; and

(B) The price changes.

(iii) Use T, U, V, W, X, or Y, and only those characters, in the second position to identify modifications issued to provide initial or amended shipping instructions when—

(A) The contract has FOB origin delivery terms; and

(B) The price does not change.

(iv) Only use Z in the second position to identify a modification which definitizes a letter contract.

(4) *Positions 4 through 6.* These positions are always numeric. Use a separate series of serial numbers for each type of modification listed in paragraph (c)(3) of this section. Examples of proper numbering for positions 2–6 (the first position will be either ''A'' or ''P'') are as follows:

Normal modification	Provisioned items order (reserved for exclusive use by the Air Force only)	Shipping instructions
00001–99999	K0001–K9999	S0001–S9999
then	KA001–KZ999	SA001–SZ999
A0001–A9999	L0001–L9999	T0001–T9999
B0001–B9999	LA001–LZ999	TA001–TZ999
and so on to	M0001–M9999	U0001–U9999
H0001–H9999	MA001–MZ999	UA001–UZ999
then	N0001–N9999	V0001–V9999
J0001–J9999	NA001–NZ999	VA001–VZ999
then	P0001–P9999	W0001–W9999
R0001–R9999	PA001–PZ999	WA001–WZ999
then	Q0001–Q9999	X0001–X9999
AA001–HZ999	QA001–QZ999	XA001–XZ999
then		Y0001–Y9999
JA001–JZ999		YA001–YZ999
RA001–RZ999.		

(5) If the contract administration office is changing the contract administration or disbursement office for the first time and is using computer generated modifications to notify many offices, it uses the six position supplementary number ARZ999. If either office has to be changed again during the life of the contract, the supplementary number will be ARZ998, and on down as needed.

(6) Each office authorized to issue modifications shall assign the supplementary identification numbers in sequence. Do not assign the numbers until it has been determined that a modification is to be issued.

(d) *Delivery orders under indefinite delivery contracts, orders under basic ordering agreements, and calls under blanket purchase agreements.* (1) Calls or orders issued by the office issuing the contract or agreement. Use a four position alpha-numeric call or order serial number added to the basic PII number. These shall be identified by using serial numbers beginning 0001 through 9999. When the numeric identifiers run out, use alpha characters in the third and fourth positions. Never use alpha characters in the first and second positions.

(2) Orders placed against another activity's contract or agreement.

(i) If the office placing the order or call is different from the office identified in the basic PII number, assign a serial number to the order or call. The first and second positions contain the call/order code assigned to the ordering office by appendix G. Do not use the letters A or P in the first position. The third and fourth positions are a two position serial number assigned by the ordering office. The series will begin with 01. When the numbers exceed 99, the office will assign a uniform series of identifiers containing alpha and/or numeric characters, e.g., Basic #: N00383–91–D–0001 serial #: TU01.

(ii) If an office is placing calls or orders with NIB, NISH, or UNICOR, the office shall identify the instrument with a 13 position supplementary PII number using an F in the 9th position. Modifications to these calls or orders shall be numbered in accordance with paragraph (c) of this section, e.g., Order #: DLA100–91–F–0001 modification #: A00001.

(e) *Modifications to calls or orders.* Use a two position alpha-numeric suffix, known as a call or order modification indicator, to identify a modification to a call or order.

(1) Modifications to a call or order issued by a purchasing office begin with 01, 02, and so on through 99, then B1 through B9, BA through BZ, C1 through C9, and so on through ZZ.

(2) Modifications to a call or order issued by a contract administration office begin with 1A, 1B, and so on through 9Z, followed by A1, A2, and so on to A9, then AA, AB, and so on through AZ.

Subpart 204.71—Uniform Contract Line Item Numbering System

204.7100 Scope.

This subpart prescribes policies and procedures for assigning contract line item numbers.

204.7101 Definitions.

Accounting classification reference number (ACRN) means a two position alpha or alpha/numeric control code used as a method of relating the accounting classification citation to detailed line item information contained in the schedule.

Attachment means any documentation, appended to a contract or incorporated by reference, which does not establish a requirement for deliverables.

Definitized item, as used in this subpart, means an item for which a firm

price has been established in the basic contract or by modification.

Exhibit means a document, referred to in a contract, which is attached and establishes requirements for deliverables. The term shall not be used to refer to any other kind of attachment to a contract. The DD Form 1423, Contract Data Requirements List, is always an exhibit, rather than an attachment.

Nonseverable deliverable, as used in this subpart, means a deliverable item that is a single end product or undertaking, entire in nature, that cannot be feasibly subdivided into discrete elements or phases without losing its identity.

Undefinitized item, as used in this subpart, means an item for which a price has not been established in the basic contract or by modification.

[56 FR 36289, July 31, 1991, as amended at 60 FR 34468, July 3, 1995]

204.7102 Policy.

(a) The numbering procedures of this subpart shall apply to all—

(1) Solicitations;

(2) Solicitation line and subline item numbers, if practicable;

(3) Contracts as defined in FAR Subpart 2.1;

(4) Contract line and subline item numbers;

(5) Exhibits;

(6) Exhibit line and subline items; and

(7) Any other document expected to become part of the contract.

(b) The numbering procedures are mandatory for all contracts where separate contract line item numbers are assigned, unless—

(1) There are no postaward contract administration functions that the contracting officer will assign to an office listed in the DoD Directory of Contract Administration Services Components;

(2) The contract is an indefinite delivery type for petroleum products against which posts, camps, and stations issue delivery orders for products to be consumed by them; or

(3) The contract is a communications service authorization issued by the Defense Information Systems Agency's Office of Defense Commercial Communications.

[56 FR 36289, July 31, 1991, as amended at 56 FR 67212, Dec. 30, 1991; 60 FR 34468, July 3, 1995]

204.7103 Contract line items.

204.7103–1 Criteria for establishing.

Contracts shall identify the items or services to be acquired as separate contract line items unless it is not feasible to do so.

(a) Contract line items shall have all four of the following characteristics; however, there are exceptions within the characteristics, which may make establishing a separate contract line item appropriate even though one of the characteristics appears to be missing—

(1) *Single unit price.* The item shall have a single unit price or a single total price, except—

(i) If the item is not separately priced (NSP) but the price is included in the unit price of another contract line item, enter NSP instead of the unit price;

(ii) When there are associated subline items, established for other than informational reasons, and those subline items are priced in accordance with 204.7104;

(iii) When the items or services are being acquired on a cost-reimbursement contract;

(iv) When the contract is for maintenance and repair services (e.g., a labor hour contract) and firm prices have been established for elements of the total price of an item but the actual number and quantity of the elements are not known until performance. The contracting officer may structure these contracts to reflect a firm or estimated total amount for each line item;

(v) When the contract line item is established to refer to an exhibit or an attachment (if management needs dictate that a unit price be entered, the price shall be set forth in the item description block and enclosed in parentheses); or

(vi) When the contract is an indefinite delivery type contract and provides that the price of an item shall be determined at the time a delivery

order is placed and the price is influenced by such factors as the quantity ordered (e.g., 10–99 @ $1.00, 100–249 @ $.98, 250+ @ $.95), the destination, the FOB point, or the type of packaging required.

(2) *Separately identifiable.* A contract line item must be identified separately from any other items or services on the contract.

(i) Supplies are separately identifiable if they have no more than one—

(A) National stock number (NSN);

(B) Item description; or

(C) Manufacturer's part number.

(ii) Services are separately identifiable if they have no more than one—

(A) Scope of work; or

(B) Description of services.

(iii) This requirement does not apply if there are associated subline items, established for other than informational reasons, and those subline items include the actual detailed identification in accordance with 204.7104. Where this exception applies, use a general narrative description instead of the contract item description.

(3) *Separate delivery schedule.* Each contract line item or service shall have its own delivery schedule, period of performance, or completion date expressly stated (''as required'' constitutes an expressly stated delivery term).

(i) The fact that there is more than one delivery date, destination, performance date, or performance point may be a determining factor in the decision as to whether to establish more than one contract line item.

(ii) If a contract line item has more than one destination or delivery date, the contracting officer may create individual contract line items for the different destinations or delivery dates, or may specify the different delivery dates for the units by destination in the delivery schedule.

(4) *Single accounting classification citation.* (i) Each contract line item shall reference a single accounting classification citation except as provided in paragraph (a)(4)(ii) of this subsection.

(ii) The use of multiple accounting classification citations for a contract line item is authorized in the following situations:

(A) A single, nonseverable deliverable to be paid for with R&D or other funds properly incrementally obligated over several fiscal years in accordance with DoD policy;

(B) A single, nonseverable deliverable to be paid for with different authorizations or appropriations, such as in the acquisition of a satellite or the modification of production tooling used to produce items being acquired by several activities; or

(C) A modification to an existing contract line item for a nonseverable deliverable that results in the delivery of a modified item(s) where the item(s) and modification are to be paid for with different accounting classification citations.

(iii) When the use of multiple accounting classification citations is authorized for a single contract line item, establish informational subline items for each accounting classification citation in accordance with 204.7104–1(a).

(b) Exhibits may be used as an alternative to putting a long list of contract line items in the schedule. If exhibits are used, create a contract line item citing the exhibit's identifier. See 204.7105(a).

(c) If the contract involves a test model or a first article which must be approved, establish a separate contract line item or subline item for each item of supply or service which must be approved. If the test model or first article consists of a lot composed of a mixture of items, a single line item or subline item may be used for the lot.

(d) If a supply or service involves ancillary functions, like packaging and handling, transportation, payment of state or local taxes, or use of reusable containers, and these functions are normally performed by the contractor and the contractor is normally entitled to reimbursement for performing these functions, do not establish a separate contract line item solely to account for these functions. However, do identify the functions in the contract schedule. If the offeror separately prices these functions, contracting officers may establish separate contract line items for the functions; however, the separate

line items must conform to the requirements of paragraph (a) of this subsection.

[56 FR 36289, July 31, 1991, as amended at 60 FR 34468, July 3, 1995; 60 FR 43191, Aug. 18, 1995]

204.7103–2 Numbering procedures.

(a) Contract line items shall consist of four numeric digits 0001 through 9999. Do not use numbers beyond 9999. Within a given contract, the item numbers shall be sequential but need not be consecutive.

(b) The contract line item number shall be the same as the solicitation line item number unless there is a valid reason for using different numbers.

(c) Once a contract line item number has been assigned, it shall not be assigned to another, different, contract line item in the same contract.

204.7104 Contract subline items.

204.7104–1 Criteria for establishing.

Contract subline items provide flexibility to further identify elements within a contract line item for tracking performance or simplifying administration. There are only two kinds of subline items: those which are informational in nature and those which consist of more than one item that requires separate identification.

(a) *Informational subline items.* (1) This type of subline item identifies information that relates directly to the contract line item and is an integral part of it (e.g., parts of an assembly or parts of a kit). These subline items shall not be scheduled separately for delivery, identified separately for shipment or performance, or priced separately for payment purposes.

(2) The informational subline item may include quantities, prices, or amounts, if necessary to satisfy management requirements. However, these elements shall be included within the item description in the supplies/services column and enclosed in parentheses to prevent confusing them with quantities, prices, or amounts that have contractual significance. Do not enter these elements in the quantity and price columns.

(3) Informational subline items shall be used to identify each accounting classification citation assigned to a single contract line item number when use of multiple citations is authorized (see 204.7103–1(a)(4)(ii)).

(b) *Separately identified subline items.* (1) Subline items will be used instead of contract line items to facilitate payment, delivery tracking, contract funds accounting, or other management purposes. Such subline items shall be used when items bought under one contract line item number—

(i) Are to be paid for from more than one accounting classification. A subline item shall be established for the quantity associated with the single accounting classification citation. Establish a line item rather than a subline item if it is likely that a subline item may be assigned additional accounting classification citations at a later date. Identify the funding as described in 204.7104–1(a)(3);

(ii) Are to be packaged in different sizes, each represented by its own NSN;

(iii) Have collateral costs, such as packaging costs, but those costs are not a part of the unit price of the contract line item;

(iv) Have different delivery dates or destinations or requisitions, or a combination of the three; or

(v) Identify parts of an assembly or kit which—

(A) Have to be separately identified at the time of shipment or performance; and

(B) Are separately priced.

(2) Each separately identified contract subline item shall have its own—

(i) Delivery schedule, period of performance, or completion date;

(ii) Unit price or single total price or amount (not separately priced (NSP) is acceptable as an entry for price or amount if the price is included in another subline item or a different contract line item). This requirement does not apply—

(A) If the subline item was created to refer to an exhibit or an attachment. If management needs dictate that a unit price be entered, the price shall be set forth in the item description block of the schedule and enclosed in parentheses; or

(B) In the case of indefinite delivery contracts described at 204.7103–1(a)(1)(vi).

(iii) Identification (e.g., NSN, item description, manufacturer's part number, scope of work, description of services).

(3) Unit prices and extended amounts.

(i) The unit price and total amount for all subline items may be entered at the contract line item number level if the unit price for the subline items is identical. If there is any variation, the subline item unit prices shall be entered at the subline item level only.

(ii) The unit price and extended amounts may be entered at the subline items level.

(iii) The two methods in paragraphs (b)(3) (i) and (ii) of this subsection shall not be combined in a contract line item.

(iv) When the price for items not separately priced is included in the price of another subline item or contract line item, it may be necessary to withhold payment on the priced subline item until all the related subline items that are not separately priced have been delivered. In those cases, use the clause at 252.204–7002, Payment for Subline Items Not Separately Priced.

[56 FR 36289, July 31, 1991, as amended at 60 FR 34468, July 3, 1995]

204.7104–2 Numbering procedures.

(a) Number subline items by adding either two numeric characters or two alpha characters to the basic contract line item number.

(1) *Information subline item numbers.* Use numeric characters only for information subline items, running 01 through 99. Do not use spaces or special characters to separate the subline item number from the contract line item number that is its root. For example, if the contract line item number is 0001, the first three subline items would be 000101, 000102, and 000103. Do not use a designation more than once within a contract line item.

(2) *Separately identified subline items.* Use alpha characters only for separately identified subline items, running AA through ZZ. Do not use spaces or special characters to separate the subline item number from the contract line item number that is its root. For example, if the contract line item number is 0001, the first three subline items would be 0001AA, 0001AB, and 0001AC.

(i) Do not use the letters I or O as alpha characters.

(ii) Use all 24 available alpha characters in the second position before selecting a different alpha character for the first position. For example, AA, AB, AC, through AZ before beginning BA, BB, and BC.

(b) Within a given contract line item, the subline item numbers shall be sequential but need not be consecutive.

(c) Exhibits may be used as an alternative to setting forth in the schedule a long list of contract subline items. If exhibits are used, create a contract subline item citing the exhibit's identifier. See 204.7105.

(d) If a contract line item involves ancillary functions, like packaging and handling, transportation, payment of state or local taxes, or use of reusable containers, and these functions are normally performed by the contractor and the contractor is normally entitled to reimbursement for performing these functions, do not establish a separate subline item solely to account for these functions. However, do identify the functions in the contract schedule. If offeror separately prices these functions, then contracting officers may establish separate subline items for the functions; however, the separate subline items must conform to the requirements of 204.7104–1.

(e) The following examples illustrate subline items numbering—

(1) Subline items structured to identify destinations for identical items, identically priced (delivery schedule shall be established for each subline item, not the contract line item).

Item No.	Supplies/service	Quantity	Unit	Unit price	Amount
0001	NSN 1615–00–591–6620 Shim, Aluminum Alloy, Apbl, Rotor, Helicopter PRON A1–9–63821–M1–M1 ACRN:AA.	.....		.....	.....
0001AA	A3168R–9030–4025 A2537M IPD: 2 RDD: 334 PROJ: 501.	10	EA	$100.00	$1,000.00

Item No.	Supplies/service	Quantity	Unit	Unit price	Amount
0001AB	A3168R–9030–4026 A51AXBM IPD: 2 RDD: 325 PROJ: 502.	10	EA	$100.00	$1,000.00
0001AC	A3168R–9030–4027 A67KBCM IPD: 2 RDD: 349 PROJ: 503.	15	EA	$100.00	$1,500.00

(2) Subline items structured to identify destinations for identical items, not identically priced (delivery schedule shall be established for each subline item, not the contract line item).

Item No.	Supplies/service	Quantity	Unit	Unit price	Amount
0001	NSN 1615–00–591–6620 Shim, Aluminum Alloy, Apbl, Rotor, Helicopter PRON A1–9–63821–M1–M1 ACRN:AA.	.....		.....	.....
0001AA	A3168R–9030–4025 A2537M IPD: 2 RDD: 334 PROJ: 501.	10	EA	$100.00	$1,000.00
0001AB	A3168R–9030–4026 A51AXBM IPD: 2 RDD: 325 PROJ: 502.	20	EA	$99.00	$1,980.00
0001AC	A3168R–9030–4027 A67KBCM IPD: 2 RDD: 349 PROJ: 503.	30	EA	$98.00	$2,940.09

Note: Difference in prices for identical items is due to separate destinations for FOB destination delivery.

(3) Subline items structured to identify different sizes of an item that are identically priced (delivery schedule shall be established for each subline item, not the contract line item).

Item No.	Supplies/service	Quantity	Unit	Unit price	Amount
0013	Boots Insulated, Cold Weather White, Type II, Class 1 ...	.....	PR	$38.35	$13,422.50
0013AA	8430–00–655–5541 Size 5N	50		.....	.....
0013AB	8430–00–655–5544 Size 8N	70		.....	.....
0013AC	8430–00–655–5551 Size 9N	30		.....	.....
0013AD	8430–00–655–5535 Size 9R	200		.....	.....

Note: Unit price and total amount shown at line item level rather than at subline item level.

(4) Subline items structured to identify different sizes of an item that are not identically priced (delivery schedule shall be established for each subline item, not the contract line item).

Item No.	Supplies/service	Quantity	Unit	Unit price	Amount
0002	Body Armor Ground Troops Variable Type Small Arms, Fragmentation Protective Nylon Felt Vest, Front and Back Plates, Ceramic Plate, Type I.	.....		.....	.....
0002AA	First Article	1	LO	NSP	.....
0002AB	8470–00–141–0935, Medium Regular	1936	SE	$331.77	$642,306.72
0002AC	8470–00–141–0936, Large Regular	625	SE	355.77	222,356.25
0002AD	8470–00–141–0937, Medium Long	1237	SE	346.77	428,954.49
0002AE	8470–00–141–0938, Large Long	804	SE	365.77	294,079.08

(5) Subline items structured to provide the capability for relating subordinate separately priced packaging costs to the overall contract line item. (Separate delivery schedules shall be established for the subline item identifying the contractor's product and for the subline item identifying packaging. No schedule will be established for the contract line item.)

Item No.	Supplies/service	Quantity	Unit	Unit price	Amount
0001	6105–00–635–6568 50380 Ref No 63504–WZ Armature				

Item No.	Supplies/service	Quantity	Unit	Unit price	Amount
0001AA	6105–00–635–6568 50380 Ref No 63504–WZ Armature Motor ACRN:AA	2	Ea	$2,895.87	$5,791.74
0001AB	Packaging ACRN:AA	2	Ea	$289.58	$579.16

(6) Subline items structured to identify different accounting classifications for identical items (delivery schedule shall be established for each subline item, not the contract line item).

AJ: 17X150518350315069100000192B000000000000000000
AK: 17X150518370317569100000192B000000000000000000
AL: 17X150519350314369100000192B000000000000000000

Item no.	Supplies/service	Quantity	Unit	Unit price	Amount
0002	Pulse Decoder, KY–312/A5Q–19	.....	EA	$3,037.40	
0002AA	Pulse Decoder, KY–312/A5Q–19 ACRN: AJ	2		.....	6,074.80
0002AB	Pulse Decoder, K1Y–312/A5Q–19 ACRN: AK	6		.....	18,224.40
0002AC	Pulse Decoder, KY–312/A5Q–19 ACRN: AL	2		.....	$6,074.80

Note: Unit price may be shown at line item level and total amounts shown at subline item level.

(7) Informational subline items established to identify multiple accounting classification citations assigned to a single contract line item.

Item No.	Supplies/service	Quantity	Unit	Unit price	Amount
0001	Air Vehicle	1	Ea	$6,700,000	$6,700,000
000101	ACRN:AA $3,300,000				
000102	ACRN:AB $2,000,000				
000103	ACRN:AC $1,400,000				

(8) Subline items structured to identify parts of an assembly (delivery schedule and price shall be established for each identified part at the subline item level, not for the assembly at the contract line item level).

Item no.	Supplies/service	Quantity	Unit	Unit price	Amount
0003	Automatic Degausing System Consisting of: (2 ea @ $52,061; $104,122 total).	.....		.....	.....
0003AA	Switchboard	2	EA	$52,061.00	$104,122.00
0003AB	Remote Control Panel	2	EA	NSP	.....
0003AC	Power Supply (M Coil) SSM Type 145 Amps, 220 V DC)	2	EA	NSP	.....
0003AF	Power Supply (A Coil) SSM Type (118 Amps, 220 V DC)	2	EA	NSP	.....

(9) Subline items structured to identify parts of a kit (delivery schedule and price shall be established for each identified part at the subline item level, not for the kit at the contract line item level).

Item no.	Supplies/service	Quantity	Unit	Unit price	Amount
0031	Conversion Kit to Convert Torpedo MK 45 Mod 0 to Torpedo MK 45 Mod 1, (50 Kt @ $10,868.52; $543,426 total).	.....		.....	.....
0031AA	Integrator Assy LD 620106	50	EA	$10,868.52	$543,426.00
0031AB	Pulse Generator Assy LD 587569	50	EA	NSP	.....
0031AC	Drive Shaft Assy LD 587559	50	EA	NSP	.....
0031BF	Actual Panel Assy LD 542924	50	EA	NSP	.....

Note: In this example, the prices of subline items 0031AB through 0031BF are included in the Integrator Assembly.

[56 FR 36289, July 31, 1991, as amended at 60 FR 34468, July 3, 1995]

204.7105 Contract exhibits and attachments.

(a) *Use of exhibits.* (1) Exhibits may be used instead of putting a long list of contract line items or subline items in the contract schedule. Exhibits are particularly useful in buying spare parts.

(2) When using exhibits, establish a contract line or subline item and refer to the exhibit.

(3) Identify exhibits individually.

(4) Each exhibit shall apply to only one contract line item or subline item, except—

(i) One exhibit may apply to one or more option line item(s) when the data required under the exhibits is identical in all respects except the period during which the option is to be exercised; and

(ii) An exhibit may apply to more than one contract line item if the exhibit is not separately priced and the exhibit deliverable is identical for all applicable contract line items.

(5) More than one exhibit may apply to a single contract line item.

(6) Data items on a DD Form 1423, Contract Data Requirements List, may be either separately priced or not separately priced.

(i) *Separately priced.* When data are separately priced, enter the price in only one place in the contract: in either Section B of the contract schedule or on the DD Form 1423. Whichever place, display the price there consistently.

(A) Section B. If the prices are entered in section B of the schedule, detach Blocks 17 and 18 of the DD Form 1423 and file elsewhere in the contract file. If the prices are entered on the DD Form 1423, do not detach Blocks 17 and 18 of the DD Form 1423.

(B) DD Form 1423. If the prices are entered on the DD Form 1423, the price of all separately priced deliverable data items attributable to a line item shall be totalled and included, for information purposes, in parentheses, below the supplies services for that line item, in section B of the schedule.

(ii) *NSP.* Include prices in a priced contract line item or subline item. Detach Blocks 17 and 18 of the DD Form 1423 and retain them elsewhere as required.

(7) The contracting officer may append attachments to exhibits, as long as the attachment does not identify a deliverable requirement which has not been established by a contract or exhibit line or subline item.

(b) *Numbering exhibits and attachments.* (1) Use alpha characters to identify exhibits. The alpha characters shall be either single or double capital letters. Do not use the letters I or O.

(2) Exhibit identifiers need not be either consecutive or sequential.

(3) Once an identifier has been assigned to an exhibit, do not use it on another exhibit in the same contract.

(4) The identifier shall always appear in the first or first and second positions of all applicable exhibit line item numbers.

(5) If the exhibit has more than one page, cite the procurement instrument identification number, exhibit identifier, and applicable contract line or subline item number on each page.

(6) Use numbers to identify attachments.

(c) *Numbering exhibit line items and subline items*—(1) *Criteria for establishing.* The criteria for establishing exhibit line items and subline items is the same as those for establishing contract line items and subline items (see 204.7103 and 204.7104, respectively).

(2) *Procedures for numbering.* (i) Number items in an exhibit in a manner similar to contract line items and subline items.

(ii) Number line items using a four position number.

(A) The first position or the first and second position contain the exhibit identifier.

(B) The third and fourth positions contain the alpha or numeric character serial numbers assigned to the line item.

(iii) Assign alpha or numeric characters to the line item on the basis of the same criteria outlined in contract subline items at 204.7104.

(iv) Exhibit line item numbers shall be sequential within the exhibit.

(3) *Examples*—(i) *Two position serial number for double letter exhibit identifier.*

Cumulative No. of line items	Serial number sequence
1–33	01 thru 09, then OA thru OZ, then
34–67	10 thru 19, then 1A thru 1Z, then
68–101	20 thru 29, then 2A thru 2Z, then
102–135	30 thru 39, then 3A thru 3Z, then
136–169	40 thru 49, then 4A thru 4Z, then
170–203	50 thru 59, then 5A thru 5Z, then
204–237	60 thru 69, then 6A thru 6Z, then
238–271	70 thru 79, then 7A thru 7Z, then
272–305	80 thru 89, then 8A thru 8Z, then
306–339	90 thru 99, then 9A thru 9Z, then
340–373	A0 thru A9, then AA thru AZ, then
374–407	B0 thru B9, then BA thru BZ, then
408–441	C0 thru C9, then CA thru CZ, then
442–475	D0 thru D9, then DA thru DZ, then
476–509	E0 thru E9, then EA thru EZ, then
510–543	F0 thru F9, then FA thru FZ, then
544–577	G0 thru G9, then GA thru GZ, then
578–611	H0 thru H9, then HA thru HZ, then
612–645	J0 thru J9, then JA thru JZ, then
646–679	K0 thru K9, then KA thru KZ, then
680–713	L0 thru L9, then LA thru LZ, then
714–747	M0 thru M9, then MA thru MZ, then
748–781	N0 thru N9, then NA thru NZ, then
782–815	P0 thru P9, then PA thru PZ, then
816–849	Q0 thru Q9, then QA thru QZ, then
850–883	R0 thru R9, then RA thru RZ, then
884–917	S0 thru S9, then SA thru SZ, then
918–951	T0 thru T9, then TA thru TZ, then
952–985	U0 thru U9, then UA thru UZ, then
986–1019	V0 thru V9, then VA thru VZ, then
1020–1053	W0 thru W9, then WA thru WZ, then
1054–1087	X0 thru X9, then XA thru XZ, then
1088–1121	Y0 thru Y9, then YA thru YZ, then
1122–1155	Z0 thru Z9, then ZA thru ZZ

(ii) *Three position numbers.*

Cumulative No. of line items	Serial number sequence
(ii) Three position numbers.	
1–33	001 thru 009, then 00A thru 00Z, then
34–67	010 thru 019, then 01A thru 101Z, then
68–101	020 thru 029, then 02A thru 02Z, then
102–135	030 thru 039, then 03A thru 03Z and so
136–305	on to
306–339	090 thru 099, then 09A thru 09Z, then
340–373	0A0 thru 0A9, then 0AA thru 0AZ, then
374–407	0B0 thru 0B9, then 0BB thru 0BZ, then
408–441	0C0 thru 0C9, then 0CA thru 0CZ, and
442–1121	so on to
1122–1155	0Z0 thru 0Z9, then 0ZA thru 0ZZ, then
1156–1189	100 thru 109, then 10A thru 10Z, then
1190–1223	110 thru 119, then 11A thru 11Z, then
1224–1257	120 thru 129, then 12A thru 12Z, and
1258–1461	so on to
1462–1495	190 thru 199, then 19A thru 19Z, then
1496–1529	1A0 thru 1A9, then 1AA thru 1AZ, then
1530–1563	1B0 thru 1B9, then 1BA thru 1BZ, and
1564–2277	so on to
2278–2311	1Z0 thru 1Z9, then 1ZA thru 1ZB, then
2312–2345	200 thru 109, then 10A thru 10Z, then
2346–2379	210 thru 219, then 21A thru 21Z, then
2380–2413	220 thru 229, then 22A thru 22Z, and
2414–2617	so on to
2618–2651	290 thru 299, then 29A thru 29Z, then
2652–2685	2A0 thru 2A9, then 2AA thru 2AZ, then
2686–2719	2B0 thru 2B9, then 2BA thru 2BZ, and
2720–3433	so on to
3434–3467	2Z0 thru 2Z9, then 2ZA thru 2ZZ, then
3468–3501	300 thru 309, then 30Z thru 30Z, and
3502–10403	so on to
10404–10437	900 thru 909, then 90A thru 90Z, then
10438–10471	910 thru 919, then 91A thru 91Z, and
10472–10709	so on to
10710–10743	990 thru 999, then 99A thru 99Z, then
10744–10777	9A0 thru 9A9, then 9AA thru 9AZ, then
10778–10811	9B0 thru 9B9, then 9BA thru 9BZ, and
10812–11525	so on to
11526–11559	9Z0 thru 9Z9, then 9ZA thru 9ZZ

204.7106 Contract modifications.

(a) If new items are added, assign new contract line or subline item numbers or exhibit line item numbers, in accordance with the procedures established at 204.7103, 204.7104, and 204.7105.

(b) Modifications to existing contract line items or exhibit line items. (1) If the modification relates to existing contract line items or exhibit line items, the modification shall refer to those item numbers.

(2) If the contracting officer decides to assign new identifications to existing contract or exhibit line items, the following rules apply—

(i) *Definitized and undefinitized items.* (A) The original line item or subline item number may be used if the modification applies to the total quantity of the original line item or subline.

(B) The original line item or subline item number may be used if the modification makes only minor changes in the specifications of some of the items ordered on the original line item or subline item and the resulting changes in unit price can be averaged to provide a new single unit price for the total quantity. If the changes in the specifications make the item significantly distinguishable from the original item or the resulting changes in unit price cannot be averaged, create a new line item.

(C) If the modification affects only a partial quantity of an existing contract or exhibit line item or subline item and the change does not involve either the delivery date or the ship-to/mark-for data, the original contract or exhibit line item or subline item number shall remain with the unchanged quantity. Assign the changed quantity the next available number.

(ii) *Undefinitized items.* In addition to the rules in paragraph (b)(2)(i), the following additional rules apply to undefinitized items—

(A) If the modification is undefinitized and increases the quantity of an existing definitized item, assign the undefinitized quantity the next available number.

(B) If the modification increases the quantity of an existing undefinitized item, the original contract or exhibit line item or subline item may be used if the unit price for the new quantity is expected to be the same as the price for the original quantity. If the unit prices of the two quantities will be different, assign the new quantity the next available number.

(C) If the modification both affects only a partial quantity of the existing contract or exhibit line or subline item and definitizes the price for the affected portion, the definitized portion shall retain the original item number. If there is any undefinitized portion of the item, assign it the next available number. However, if the modification definitizes the price for the whole quantity of the line item, and price impact of the changed work can be apportioned equally over the whole to arrive at a new unit price, the quantity with the changes can be added into the quantity of the existing item.

(D) If the modification affects only a partial quantity of an existing contract or exhibit line or subline item but does not change the delivery schedule or definitize price, the unchanged portion shall retain the original contract or exhibit line or subline item number. Assign the changed portion the next available number.

204.7107 Contract accounting classification reference number (ACRN).

(a) When a contract contains more than one accounting classification citation, contracting offices shall use ACRNs. Assigning the ACRNs is the responsibility of the contracting office issuing the contract, basic ordering agreement, or blanket purchase agreement. This authority shall not be delegated. If more than one office will use the contract (e.g., ordering officers, other contracting officers), the contract must contain instructions for assigning ACRNs.

(b) ACRNs are used to process certain contract data through the Military Standard Contract Administration Procedures (MILSCAP) system. The MILSCAP system uses the ACRN to relate certain contract administration records to the accounting classification citation used to obligate funds on the contract. Among these records are the accounting classification trailer record, the supplies schedules data record, and the services line item data record. ACRNs are also used to associate the various record formats of the contract payment notice as described in chapter 9 of the MILSCAP Manual, DoD 4000.25–5–M.

(c) *Procedures for establishing ACRNs.* ACRNs consist of a two position alpha or alpha/numeric code assigned to each discrete accounting classification citation within each contract. ACRNs shall be established in accordance with the following guidelines:

(1) Do not use the letters I and O.

(2) In no case shall an ACRN apply to more than one accounting classification citation, nor shall more than one ACRN be assigned to one accounting classification citation.

(d) *Using the ACRN in the contract.* (1) Show the ACRN as a detached prefix to the accounting classification citation in the accounting and appropriation data block or, if there are too many accounting classification citations to fit reasonably in that block, in section G (Contract Administration Data).

(2) ACRNs need not prefix accounting classification citations if the accounting classification citations are present in the contract only for the transportation officer to cite to Government bills of lading.

(3) If the contracting officer is making a modification to a contract and using the same accounting classification citations, which have had ACRNs assigned to them, the modification need cite only the ACRNs in the accounting and appropriations data block or on the continuation sheets.

(e) *Showing the ACRN in the contract.* If there is more than one ACRN in a contract, all the ACRNs will appear in several places in the schedule (e.g., ACRN:AA).

(1) *Ship-to/mark-for block.* Show the ACRN beside the identity code of each activity in the ship-to/mark-for block unless only one accounting classification citation applies to a line item or

subline item. Only one ACRN may be assigned to the same ship-to/mark-for within the same contract line or subline item number unless multiple accounting classification citations apply to a single nonseverable deliverable unit such that the item cannot be related to an individual accounting classification citation.

(2) *Supplies/services column.* (i) If only one accounting classification citation applies to a line item or a subline item, the ACRN may be shown in the supplies/services column near the item description.

(ii) If more than one accounting classification citation applies to a single contract line item, identify each assigned ACRN and the amount of associated funds using informational subline items (see 204.7104–1(a)).

(3) *Payment instructions.* (i) When a contract line item is funded by multiple accounting classification citations, the contracting officer shall provide adequate instructions in section G (Contract Administration Data), under the heading ''Payment Instructions for Multiple Accounting Classification Citations,'' to permit the paying office to charge the accounting classification citations assigned to that contract line item (see 204.7104–1(a)) in a manner that reflects the performance of work on the contract. If additional accounting classification citations are subsequently added, the payment instructions must be modified to include the additional accounting classification citations.

(ii) Payment instructions shall provide a methodology for the paying office to assign payments to the appropriate accounting classification citation(s), based on anticipated contract work performance. The method established should be consistent with the reasons for the establishment of the line items. The payment method may be based upon a unique distribution profile devised to reflect how the funds represented by each of the accounting classification citations support contract performance. Payment methods that direct that payments be made from the earliest available fiscal year funding sources, or that provide for proration across accounting classification citations assigned to the line item, or a combination thereof, may be used if that methodology reasonably reflects how each of the accounting classification citations supports contract performance.

[60 FR 34469, July 3, 1995; 60 FR 43191, Aug. 18, 1995]

Subpart 204.72—Contractor Identification

204.7200 Scope of subpart.

This subpart prescribes uniform policies and procedures for identification of commercial and Government entities when it is necessary to:

(a) Exchange data with another contracting activity, including contract administration activities and contract payment activities, or to comply with the reporting requirements of subpart 204.6; or

(b) Identify contractors for the purposes of developing computerized acquisition systems or solicitation mailing lists.

204.7201 Definitions.

(a) *Commercial and Government entity (CAGE) code* means—

(1) A code assigned by the Defense Logistics Services Center (DLSC) to identify a commercial or Government entity; or

(2) A code assigned by a member of the North Atlantic Treaty Organization (NATO) and maintained by the Defense Logistics Services Center.

(b) *Contractor identification code* means any code required by the contracting office for the purpose of identifying the offeror. CAGE codes and Data Universal Numbering System (DUNS) numbers are two examples of contractor identification codes.

[56 FR 36289, July 31, 1991, as amended at 61 FR 51031, Sept. 30, 1996; 62 FR 48181, Sept. 15, 1997]

204.7202 General.

Various coding systems are in use to identify commercial and government entities. Codes are requested by contracting and contract administration offices for various reasons. This guidance is designed to improve the accuracy of the initial code assignment and

to help ensure that the data are maintained accurately and are up-to-date.

204.7202–1 CAGE codes.

(a) CAGE codes are assigned or maintained by the Defense Logistics Services Center (DLSC) to identify commercial and Government activities. Their use is prescribed by 253.204–70(b)(5)(ii)(C) and DoD 4000.25–5–M, Military Standard Contract Administration Procedures (MILSCAP).

(b) CAGE codes have also been known in the past as federal supply codes for manufacturers (FSCM) and federal supply codes for nonmanufacturers (FSCNM).

(c) If the CAGE code is not already available in the contracting office, and the apparent awardee does not respond to the provision at 252.204–7001, Commercial and Government Entity (CAGE) Code Reporting, use the following procedures in the order listed—

(1) Use the bimonthly H–8 microfiche or CD ROM publication issued by DLSC. (Their address is: DLSC–RP, Federal Center, 74 N. Washington, Battle Creek, MI 49017–3084. Their telephone numbers are: DSN 932–4725, FTS 552–4725, or commercial (616) 961–4725.);

(2) Use the on-line access to the CAGE file through the Defense Logistics Information System;

(3) Use the on-line access to the Defense Logistics Agency CAGE file through the DLA Network or dial-up capability; or

(4) Ask DLSC to assign a CAGE code. Submit a DD Form 2051, Request for Assignment of a CAGE Code, (or electronic equivalent) to the address in paragraph (c)(1) of this subsection, ATTN: DLSC–SBB. The contracting activity completes Section A of the DD Form 2051, Request for Assignment of a Commercial and Government Entity (CAGE) Code, and the contractor completes section B. The contracting activity must verify section B before the form is submitted.

(d) Direct questions on obtaining computer tapes, electronic updates, or code assignments to DLSC (DLSC–SBB) at DSN 932–4358, FTS 552–4358, or commercial (616) 961–4358.

[56 FR 36289, July 31, 1991, as amended at 57 FR 53598, Nov. 12, 1992; 61 FR 51031, Sept. 30, 1996; 62 FR 34121, June 24, 1997]

§ 204.7202–2 DUNS numbers.

Requirements for use of DUNS numbers are contained in FAR 4.602(d) and 4.603.

[62 FR 48181, Sept. 15, 1997]

204.7202–3 Taxpayer identification numbers.

The taxpayer identification number (TIN) is prescribed in FAR subpart 4.9.

204.7203 Responsibilities of contracting officers.

(a) The contracting officer shall assist the offeror in obtaining the required contractor code(s).

(b) Prospective offerors may not be denied a solicitation or bid set because the offeror does not have a contractor code.

(c) The contracting officer or designee shall not request a new code assignment until the appropriate microfiche, hardcopy or computer files have been screened in an effort to identify a current code for the entity. If the contracting officer does not have access to the files or listings, then initiate action to obtain the files or listings and any equipment necessary to use those files and/or listings (see 204.7202–1 and 2).

(d) If a CAGE code is being requested, it is the responsibility of the contracting activity to request the assignment of the CAGE code by completing section A of the DD Form 2051, Request for Assignment of a Commercial and Government Entity (CAGE) Code (see 253.303–2051). The prospective contractor will complete section B of the form. The completed form or electronic equivalent will be submitted by the contracting activity to DLSC–SBB for processing and code assignment after the contracting activity has verified the data submitted by the contractor. CAGE codes may be requested at the time the offeror is sent a solicitation package or added to the mailing list to ensure that a code is assigned in sufficient time to process the DD Form 350, Individual Contracting Action Report, without delay.

[56 FR 36289, July 31, 1991, as amended at 57 FR 53598, Nov. 12, 1992; 61 FR 51031, Sept. 30, 1996]

204.7204 Maintenance of the CAGE file.

(a) Changes, except name changes, may be submitted in writing—

(1) By the entity identified by the code, using company letterhead, through the contract administration office;

(2) By the contracting office; or

(3) By the contract administration office (see also FAR subpart 42.12, Novation and Change-of-Name Agreements);

(4) Using the DD Form 2051, facsimile or electronic equivalent, to: Defense Logistics Services Center, DLSC–SBB, Federal Center, 74 N. Washington, Battle Creek, MI 49017–3084, Telephone Numbers: DSN 932–4358, FTS 552–4358, commercial (616) 961–4358, Facsimile: (616) 961–4528, 4388, Internet: http://www.dlsc.dla.mil/form2051.htm

(b) The change-of-name agreement shall be submitted to DLSC–SBB by the contracting officer responsible for execution of the agreement (see FAR subpart 42.12). In the event there are no current contracts in force, each contracting and contract administration office receiving notification of changes from the commercial entity shall forward a copy of the change notice annotated with the CAGE code to DLSC–SBB unless the change notice indicates that DLSC–SBB has already been notified.

(c) Additional guidance for maintaining CAGE codes is set forth at Volume 7 of DoD 4100.39–M, Defense Integrated Data System (DIDS) Manual.

[62 FR 48181, Sept. 15, 1997]

204.7205 Novation agreements, mergers and sales of assets.

Contracting officers shall process and execute novation agreements in accordance with FAR Subpart 42.12, Novation and Change-of-Name Agreements. These actions are independent of code and name assignments made as a result of the occasion which created the need for the novation agreement. The maintenance activity will determine which entity(s) will retain the existing code(s) and which entities will be assigned new codes. The contracting officer responsible for processing the novation agreement shall provide the maintenance activity with the following information:

(a) Name(s), address(es), and code(s) of the contractor(s) transferring the original contractual rights and obligations.

(b) Name(s), address(es), and code(s) (if any) of the entity who is the successor in interest (transferor).

(c) Name(s), address(es), and code(s) (if any) of the entity who is retaining or receiving the rights to the technical data.

(d) Description of the circumstances surrounding the novation agreement and especially the relationship of each entity to the other.

204.7206 Using CAGE codes to identify agents and brokers.

Authorized agents and brokers are entities and, as such, may be assigned CAGE codes for identification and processing purposes.

(a) A single CAGE code will be assigned to the agent/broker establishment in addition to any codes assigned to the entities represented by the agent/broker, i.e., only one code will be assigned to a specific agent/broker entity regardless of the number of firms represented by that agent/broker.

(b) Additional codes may be assigned to an agent/broker if they meet the criteria for assigning additional codes for entities, e.g., different location.

(c) Codes will not be assigned to an agent/broker in care of the entity being represented or in any way infer that the agent/broker is a separate establishment bearing the name of the entity represented by the agent/broker.

[56 FR 36289, July 31, 1991, as amended at 61 FR 51032, Sept. 30, 1996; 62 FR 48182, Sept. 15, 1997]

SUBCHAPTER B—ACQUISITION PLANNING

PART 205—PUBLICIZING CONTRACT ACTIONS

Sec.

Subpart 205.2—Synopses of Proposed Contract Actions

205.203 Publicizing and response time.
205.207 Preparation and transmittal of synopses.

Subpart 205.3—Synopses of Contract Awards

205.303 Announcement of contract awards.

Subpart 205.4—Release of Information

205.470 Contractor information to be provided cooperative agreement holders.
205.470–1 Statutory requirement.
205.470–2 Contract clause.

Subpart 205.5—Paid Advertisements

205.502 Authority.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36302, July 31, 1991, unless otherwise noted.

Subpart 205.2—Synopses of Proposed Contract Actions

205.203 Publicizing and response time.

(b) Allow at least 45 days response time when requested by a qualifying or designated country source (as these terms are used in part 225) and the request is consistent with the Government's requirement.

205.207 Preparation and transmittal of synopses.

(d)(i) For small disadvantaged business set-asides under 219.502–2–70, use CBD Numbered Note 4.

(ii) For acquisitions being considered for small disadvantaged business set-aside, use CBD Numbered Note 6.

(iii) For historically black college and university and minority institution set-asides under 226.7003, use CBD Numbered Note 5.

(iv) For acquisitions being considered for historically black college and university and minority institution set-aside, state:

> This proposed contract is being considered as a 100 percent set-aside for historically black colleges and universities (HBCUs) and minority institutions (MIs), as defined by the clause at 252.226–7000 of the Defense Federal Acquisition Regulation Supplement. Interested HBCUs and MIs should provide the contracting office as early as possible, but not later than 15 days after this notice, evidence of their capability to perform the contract, and a positive statement of their eligibility as an HBCU or MI. If adequate response is not received from HBCUs and MIs, the solicitation will instead be issued, without further notice, as: _____ (indicate if unrestricted, or restricted for small business or small disadvantaged business, etc.). Therefore, replies to this notice are also requested from

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(enter the types of firms to be solicited in the event an HBCU or MI set-aside is not made).''

(v) For broad agency announcement (BAA) (see 235.016) notices, indicate which, if any, portion of the BAA will be set-aside for historically black colleges and universities and minority institutions.

(e) For acquisitions restricted to domestic sources under the authority of FAR 6.302–3, use CBD Numbered Note 13.

Subpart 205.3—Synopses of Contract Awards

205.303 Announcement of contract awards.

(a) *Public announcement.* (i) The threshold for DoD awards is $5 million. Report all contractual actions, including modifications, that have a face value, excluding unexercised options, of more than $5 million.

(A) For undefinitized contractual actions, report the not-to-exceed (NTE) amount. Later, if the definitized amount exceeds the NTE amount by more than $5 million, report only the amount exceeding the NTE.

(B) For indefinite delivery, time and material, labor hour, and similar contracts, report the initial award if the estimated face value, excluding

unexercised options, is more than $5 million. Do not report orders up to the estimated value, but after the estimated value is reached, report subsequent modifications and orders that have a face value of more than $5 million.

(C) Do not report the same work twice.

(ii) Departments and agencies submit the information—

(A) To the Office of the Assistant Secretary of Defense (Public Affairs);

(B) By the close of business the day before the date of the proposed award;

(C) Using report control symbol DD–LA– (AR) 1279;

(D) Including, as a minimum, the following—

(*1*) *Contract data.* Contract number, modification number, or delivery order number, face value of this action, total cumulative face value of the contract, description of what is being bought, contract type, whether any of the buy was for foreign military sales (FMS) and identification of the FMS customer;

(*2*) *Competition information.* Number of solicitations mailed and number of offers received;

(*3*) *Contractor data.* Name, address, and place of performance (if significant work is performed at a different location);

(*4*) *Funding data.* Type of appropriation and fiscal year of the funds, and whether the contract is multiyear (see FAR Subpart 17.1); and

(*5*) *Miscellaneous data.* Identification of the contracting office, the contracting office point of contact, known congressional interest, and the information release date.

(iii) Departments and agencies, in accordance with department/agency procedures and concurrent with the public announcement, shall provide information similar to that required by paragraph (a)(ii) of this section to members of Congress in whose state or district the contractor is located and the work is to be performed.

[56 FR 36302, July 31, 1991, as amended at 56 FR 67212, Dec. 30, 1991]

Subpart 205.4—Release of Information

205.470 Contractor information to be provided cooperative agreement holders.

205.470–1 Statutory requirement.

(a) As required by 10 U.S.C. 2413, the Defense Logistics Agency enters into cooperative agreements—

(1) With—

(i) State and local governments;

(ii) Non-profit organizations;

(iii) Indian tribal organizations; and

(iv) Indian-owned economic enterprises

(2) For the provision of technical assistance to business entities.

(b) Contractors receiving defense contracts valued at more than $500,000 must provide cooperative agreement holders, at their request, the information specified in the clause at 252.205–7000, Provision of Information to Cooperative Agreement Holders.

205.470–2 Contract clause.

Use the clause at 252.205–7000, Provision of Information to Cooperative Agreement Holders, in solicitations and contracts expected to exceed $500,000.

Subpart 205.5—Paid Advertisements

205.502 Authority.

For paid advertisements to recruit civilian personnel, see section 332–1–9 of the Federal Personnel Manual.

(a) *Newspapers.* (i) Heads of contracting activities are delegated authority to approve the publication of paid advertisements in newspapers. They may redelegate this authority in accordance with agency procedures.

(ii) Submit DD Form 1535, Request/Approval for Authority to Advertise, to the approval authority to obtain special or general authority.

(A) Special authority permits the publication of a given advertisement for a specified number of times in designated newspapers.

(B) General authority permits the publication of such advertisements as may be required during a designated fiscal year.

PART 206—COMPETITION REQUIREMENTS

Sec.
206.001 Applicability.

Subpart 206.2—Full and Open Competition After Exclusion of Sources

206.202 Establishing or maintaining alternative sources.
206.203 Set-asides for small business and labor surplus area concerns.

Subpart 206.3—Other Than Full and Open Competition

206.302 Circumstances permitting other than full and open competition.
206.302–1 Only one responsible source and no other supplies or services will satisfy agency requirements.
206.302–2 Unusual and compelling urgency.
206.302–3 Industrial mobilization; or engineering, development, or research capability.
206.302–3 –70 Solicitation provision.
206.302–4 International agreement.
206.302–5 Authorized or required by statute.
206.302–7 Public interest.
206.303 Justifications.
206.303–1 Requirements.
206.303–2 Content.
206.304 Approval of the justification.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36303, July 31, 1991, unless otherwise noted.

206.001 Applicability.

(b) Contracts awarded using the procedures in 237.104(b)(ii) are expressly authorized by 10 U.S.C. 1091.

[60 FR 61592, Nov. 30, 1995]

Subpart 206.2—Full and Open Competition After Exclusion of Sources

206.202 Establishing or maintaining alternative sources.

(a) Agencies may use this authority to totally or partially exclude a particular source from a contract action.

(b) The determination and findings (D&F) and the documentation supporting the D&F must identify the source to be excluded from the contract action.

(i) Include the following information, as applicable, and any other information that may be pertinent, in the supporting documentation:

(A) The acquisition history of the supplies or services, including sources, prices, quantities, and dates of award;

(B) The circumstances which make it necessary to exclude the particular source from the contract action, including—

(*1*) The reasons for the lack of or potential loss of alternative sources; e.g., the technical complexity and criticality of the supplies or services; and

(*2*) The current annual requirement and projected needs for the supplies or services;

(C) Whether the existing source must be totally excluded from the contract action or whether a partial exclusion is sufficient;

(D) The potential effect of exclusion on the excluded source in terms of loss of capability to furnish the supplies or services in the future;

(E) When FAR 6.202(a)(1) is the authority, the basis for—

(*1*) The determination of future competition; and

(*2*) The determination of reduced overall costs. Include, as a minimum, a discussion of start-up costs, facility costs, duplicative administration costs, economic order quantities, and life cycle cost considerations; and

(F) When FAR 6.202(a)(2) is the authority—

(*1*) The current annual and mobilization requirements for the supplies or services, citing the source of, or the basis for, the data;

(*2*) A comparison of current production capacity with that necessary to meet mobilization requirements;

(*3*) An analysis of the risks of relying on the present source; and

(*4*) A projection of the time required for a new source to acquire the necessary facilities and achieve the production capacity necessary to meet mobilization requirements.

(ii) A sample format for Determination and Findings citing the authority of FAR 6.202(a) is in Table 6–1, Determinations and Findings.

TABLE 6–1—DETERMINATIONS AND FINDINGS

Determinations and Findings
Authority to Exclude a Source

In accordance with 10 U.S.C. 2304(b)(1), it is my determination that the following contract action may be awarded using full and open competition after exclusion of _____[1]:

(Describe requirement.) Findings The exclusion of _____[1]

Alternate 1: will increase or maintain competition for this requirement and is expected to result in a reduction of $_____ in overall costs for the present and future acquisition of these supplies or services. (Describe how estimate was derived.)

Alternate 2: is in the interest of national defense because it will result in having a supplier available for furnishing these supplies or services in case of a national emergency or industrial mobilization. (Explain circumstances requiring exclusion of source.)

Alternate 3: is in the interest of national defense because it will result in establishment or maintenance of an essential engineering, research or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center. (Explain circumstances requiring exclusion of source.)

206.203 Set-asides for small business and labor surplus area concerns.

(b) Also no separate justification or determination and findings is required for contract actions processed as small disadvantaged business set-asides (219.502–2–70) or as historically black college and university and minority institution set-asides (226.7003).

Subpart 206.3—Other Than Full and Open Competition

206.302 Circumstances permitting other than full and open competition.

206.302–1 Only one responsible source and no other supplies or services will satisfy agency requirements.

(a) *Authority.* (2)(i) Section 8059 of Pub. L. 101–511 and similar sections in subsequent defense appropriations acts prohibit departments and agencies from entering into contracts for studies, analyses, or consulting services (see FAR subpart 37.2) on the basis of an unsolicited proposal without providing for full and open competition, unless—

(*1*) The head of the contracting activity, or a designee no lower than chief of the contracting office, determines that—

(*i*) Following thorough technical evaluation, only one source is fully qualified to perform the proposed work;

(*ii*) The unsolicited proposal offers significant scientific or technological promise, represents the product of original thinking, and was submitted in confidence; or

(*iii*) The contract benefits the national defense by taking advantage of a unique and significant industrial accomplishment or by ensuring financial support to a new product or idea;

(*2*) A civilian official of the DoD, whose appointment has been confirmed by the Senate, determines the award to be in the interest of national defense; or

(*3*) The contract is related to improvement of equipment that is in development or production.

(b) *Application.* This authority may be used for acquisitions of test articles and associated support services from a designated foreign source under the DoD Foreign Comparative Testing Program.

(4) Do not use this authority unless the equipment or parts have been adopted as standard items of supply in accordance with DoDI 5000.2, Defense Acquisition Management Policies and Procedures.

[56 FR 36303, July 31, 1991, as amended at 57 FR 14992, Apr. 23, 1992; 58 FR 28463, May 13, 1993]

206.302–2 Unusual and compelling urgency.

(b) *Application.* The circumstances under which use of this authority may be appropriate include, but are not limited to, the following:

(i) Supplies, services, or construction needed at once because of fire, flood, explosion, or other disaster;

[1] Identify source being excluded.

(ii) Essential equipment or repair needed at once to—

(A) Comply with orders for a ship;

(B) Perform the operational mission of an aircraft; or

(C) Preclude impairment of launch capabilities or mission performance of missiles or missile support equipment.

(iii) Construction needed at once to preserve a structure or its contents from damage;

(iv) Purchase requests citing an issue priority designator under DoDD 4410.6, Uniform Material Movement and Issue Priority System, of 4 or higher, or citing ''Electronic Warfare QRC Priority.''

206.302–3 Industrial mobilization; or engineering, development, or research capability.

206.302–3–70 Solicitation provision.

Use the provision at 252.206–7000, Domestic Source Restriction, in all solicitations that are restricted to domestic sources under the authority of FAR 6.302–3.

206.302–4 International agreement.

(c) *Limitations.* Pursuant to 10 U.S.C. 2304(f)(2)(E), the justifications and approvals described in FAR 6.303 and 6.304 are not required if—

(i) The head of the contracting activity prepares a document which describes the terms of an agreement or treaty or the written directions, such as a Letter of Offer and Acceptance, that have the effect of requiring the use of other than competitive procedures for the acquisition; and

(ii) The document in paragraph (c)(i) of this subsection is approved by the competition advocate for the contracting activity.

206.302–5 Authorized or required by statute.

(b) *Application.* Agencies may use this authority to—

(i) Acquire supplies and services from military exchange stores outside the United States for use by the armed forces outside the United States in accordance with 10 U.S.C. 2424(a) and subject to the limitations of 10 U.S.C. 2424(b). The limitations of 10 U.S.C. 2424(b) (1) and (2) do not apply to the purchase of soft drinks that are manufactured in the United States. For the purposes of 10 U.S.C. 2424, soft drinks manufactured in the United States are brand name carbonated sodas, manufactured in the United States, as evidenced by product markings.

(ii) Acquire police, fire protection, airfield operation, or other community services from local governments at military installations to be closed under the circumstances in 237.7401 (Section 2907 of Fiscal Year 1994 Defense Authorization Act (Pub. L. 103–160)).

(c) *Limitations.* (i) 10 U.S.C. 2361 precludes use of this exception for awards to colleges or universities for the performance of research and development, or for the construction of any research or other facility, unless—

(A) The statute authorizing or requiring award specifically—

(*1*) States that the statute modifies or supersedes the provisions of 10 U.S.C. 2361,

(*2*) Identifies the particular college or university involved, and

(*3*) States that award is being made in contravention of 10 U.S.C. 2361(a); and

(B) The Secretary of Defense provides Congress written notice of intent to award. The contract cannot be awarded until 180 days have elapsed since the date Congress received the notice of intent to award. Contracting activities must submit a draft notice of intent with supporting documentation through channels to the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition & Technology).

(ii) The limitation in paragraph (c)(i) of this subsection applies only if the statute authorizing or requiring award was enacted after September 30, 1989.

(iii) Subsequent statutes may provide different or additional constraints on the award of contracts to specified colleges and universities. Contracting officers should consult legal counsel on a case-by-case basis.

[56 FR 36303, July 31, 1991, as amended at 57 FR 14992, Apr. 23, 1992; 58 FR 28463, May 13, 1993; 59 FR 36089, July 15, 1994; 60 FR 29497, June 5, 1995; 60 FR 40107, Aug. 7, 1995]

206.302–7 Public interest.

(c) *Limitations.* For the defense agencies, the written determination to use this authority must be made by the Secretary of Defense.

206.303 Justifications.

206.303–1 Requirements.

(b) Technical and requirements personnel must obtain any review and approval required by department or agency procedures before submission of a recommendation for other than full and open competition to the contracting officer.

(c) When conditions warrant, a class justification may provide for award of multiple contracts extending across more than one program phase.

[56 FR 36303, July 31, 1991, as amended at 60 FR 61592, Nov. 30, 1995]

206.303–2 Content.

(a) Include sufficient information in the justification to permit its approval as a stand-alone document, even though agency procedures may require supplementary documentation.

206.304 Approval of the justification.

(a)(4) The Under Secretary of Defense (Acquisition & Technology) may delegate this authority to—

(A) An Assistant Secretary of Defense; or

(B) For a defense agency, an officer or employee serving in, assigned, or detailed to that agency who—

(1) If a member of the armed forces, is serving in a rank above brigadier general or rear admiral (lower half); or

(2) If a civilian, is serving in a position with a grade under the General Schedule (or any other schedule for civilian officers or employees) that is comparable to or higher than the grade of major general or rear admiral.

[61 FR 10285, Mar. 13, 1995, as amended at 61 FR 50451, Sept. 26, 1996]

PART 207—ACQUISITION PLANNING

Subpart 207.1—Acquisition Plans

Sec.

207.102 Policy.
207.103 Agency-head responsibilities.
207.104 General procedures.
207.105 Contents of written acquisition plans.
207.106 Additional requirements for major systems.

Subpart 207.4—Equipment Lease or Purchase

207.401 Acquisition considerations.
207.470 Statutory requirements.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36305, July 31, 1991, unless otherwise noted.

Subpart 207.1—Acquisition Plans

207.102 Policy.

When a class justification for other than full and open competition has been approved, planning for competition shall be accomplished consistent with the terms of that approval.

[60 FR 61592, Nov. 30, 1995]

207.103 Agency-head responsibilities.

(c)(i) Military departments and agencies shall prepare written acquisition plans for—

(A) Acquisitions for development, as defined in FAR 35.001, when the total cost of all contracts for the acquisition program is estimated at $5 million or more;

(B) Acquisitions for production or services when the total cost of all contracts for the acquisition program is estimated at $30 million or more for all years or $15 million or more for any fiscal year; and

(C) Any other acquisition considered appropriate by the department or agency.

(ii) Written plans are not required in acquisitions for a final buy out or one-time buy. The terms ''final buy out'' and ''one-time buy'' refer to a single contract which covers all known present and future requirements. This exception does not apply to a multiyear contract or a contract with options or phases.

(d) Prepare written acquisition plans for acquisition programs meeting the thresholds of paragraphs (c)(i) (A) and (B) of this section on a program basis. Other acquisition plans may be written

on either a program or an individual contract basis.

(f) The program manager, or other official responsible for the program, has overall responsibility for acquisition planning.

(h)(i) Apply design-to-cost principles—

(A) In all major defense acquisition programs (DoDD 5000.1, Defense Acquisition), unless exempted by the Secretary of Defense; and

(B) To the acquisition of systems, subsystems, and components below the thresholds for major defense acquisition programs, to the extent prescribed by DoDD 5000.1.

(ii) Consider life-cycle-cost in all acquisitions of systems and equipment.

[56 FR 36305, July 31, 1991, as amended at 61 FR 50451, Sept. 26, 1996]

207.104 General procedures.

(b) The planner should forward the requirements information to the contract administration organization when assistance in identification of potential sources of supply is necessary, when an existing contract is being modified or resolicited, or when contract administration resource requirements will be affected.

[61 FR 50451, Sept. 26, 1996]

207.105 Contents of written acquisition plans.

For acquisitions covered by 207.103(c)(i) (A) and (B), correlate the plan to the DoD Future Years Defense Program, applicable budget submissions, and the decision coordinating paper/program memorandum, as appropriate. It is incumbent upon the planner to coordinate the plan with all those who have a responsibility for the development, management, or administration of the acquisition. The acquisition plan should be provided to the contract administration organization to facilitate resource allocation and planning for the evaluation, identification, and management of contractor performance risk.

(a) *Acquisition background and objectives*—(1) *Statement of need.* Include—

(A) Applicability of a decision coordinating paper (DCP), acquisition decision memorandum, Defense Acquisition Board (DAB), and/or internal service reviews. Describe the options in the DCP/acquisition decision memorandum and delineate which option the acquisition plan supports.

(B) The date approval for operational use has been or will be obtained. If waivers are requested, describe the need for the waivers.

(C) A milestone chart depicting the acquisition objectives.

(D) Milestones for updating the acquisition plan. Indicate when the plan will be updated. Program managers should schedule updates to coincide with DAB reviews and the transition from one phase to another (e.g., engineering and manufacturing development to production and deployment).

(8) *Acquisition streamlining.* DoDD 5000.1, Defense Acquisition, and DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs, contain policy direction on acquisition streamlining. See MIL–HDBK 248, Acquisition Streamlining, for guidance on streamlining performance requirements, the technical package, and the contract strategy.

(b) *Plan of action.*—(5) *Budgeting and funding.* Include specific references to budget line items and program elements, where applicable, estimated production unit cost, and the total cost for remaining production.

(6) *Product descriptions.* For development acquisitions, describe the market research undertaken to identify commercial items, commercial items with modifications, or nondevelopmental items (see FAR part 10) that could satisfy the acquisition objectives.

(13) *Logistics considerations.* (i) Describe the extent of integrated logistics support planning to date, including references to approved plans.

(ii) Discuss the mission profile, reliability, and maintainability (R&M) program plan, R&M predictions, redundancy, qualified parts lists, parts and material qualification, R&M requirements imposed on vendors, failure analysis, corrective action and feedback, and R&M design reviews and trade-off studies.

(iv) See DoDD 5000.1, Defense Acquisition, and DoD 5000.2–R, Mandatory

Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs, for procedures on standardization and on the DoD Parts Control Program. See MIL–STD–965, Parts Control Program, for procedures on the Standardized Military Drawing Program.

(S–70) Describe the extent of Computer-Aided Acquisition and Logistics Support (CALS) implementation (see MIL–HDBK 59, Department of Defense Computer-Aided Logistics Support (CALS) Program Guide, and MIL–STD–1840A, Automated Interchange of Technical Information.

(16) *Environmental and energy conservation objectives.* Discuss actions taken to ensure either elimination of or authorization to use class I ozone-depleting chemicals and substances (see 211.271).

(18) *Other considerations.* (A) National Technology and Industrial Base. For major defense acquisition programs, address the following (Pub. L. 102–484, section 4220)—

(*1*) An analysis of the capabilities of the national technology and industrial base to develop, produce, maintain, and support such program, including consideration of the following factors related to foreign dependency (Pub. L. 102–484, section 4219(h))—

(*i*) The availability of essential raw materials, special alloys, composite materials, components, tooling, and production test equipment for the sustained production of systems fully capable of meeting the performance objectives established for those systems; the uninterrupted maintenance and repair of such systems; and the sustained operation of such systems.

(*ii*) The identification of items specified in paragraph (b)(18)(A)(*1)(i*) of this section that are available only from sources outside the national technology and industrial base.

(*iii*) The availability of alternatives for obtaining such items from within the national technology and industrial base if such items become unavailable from sources outside the national technology industrial base; and an analysis of any military vulnerability that could result from the lack of reasonable alternatives.

(*iv*) The effects on the national technology and industrial base that result from foreign acquisition of firms in the United States.

(*2*) Consideration of requirements for efficient manufacture during the design and production of the systems to be procured under the program.

(*3*) The use of advanced manufacturing technology, processes, and systems during the research and development phase and the production phase of the program.

(*4*) To the maximum extent practicable, the use of contract solicitations that encourage competing offerors to acquire, for use in the performance of the contract, modern technology, production equipment, and production systems (including hardware and software) that increase the productivity of the offerors and reduce the life-cycle costs.

(*5*) Methods to encourage investment by U.S. domestic sources in advanced manufacturing technology production equipment and processes through—

(*i*) Recognition of the contractor's investment in advanced manufacturing technology production equipment, processes, and organization of work systems that build on workers' skill and experience, and work force skill development in the development of the contract objective; and

(*ii*) Increased emphasis in source selection on the efficiency of production.

(*6*) Expanded use of commercial manufacturing processes rather than processes specified by DoD.

(*7*) Elimination of barriers to, and facilitation of, the integrated manufacture of commercial items and items being produced under DoD contracts.

(*8*) Expanded use of commercial items, commercial items with modifications, or to the extent commercial items are not available, nondevelopmental items (see FAR part 10).

(B) *Industrial preparedness (IP).*

(*1*) Provide the program's IP strategy that assesses the capability of the U.S. industrial base to achieve identified surge and mobilization goals. If no IP strategy has been developed, provide supporting rationale for this position.

(*2*) If in the IP strategy, the development of a detailed IP plan was determined to be applicable, include the

plan by text or by reference. If the development of the IP plan was determined not to be applicable, summarize the details of the analysis forming the basis of this decision.

(*3*) If the program involves peacetime and wartime hardware configurations which are supported by logistics support plans, identify their impact on the IP plan.

(C) Ensure compliance with DoDD 4210.15, Hazardous Material Pollution Prevention.

(D) *Contract administration.* Discuss the level of Government administration anticipated or currently performed and any change proposed by the contract administration office.

[56 FR 36305, July 31, 1991, as amended at 58 FR 28463, May 13, 1993; 58 FR 32061, June 8, 1993; 60 FR 29497, June 5, 1995; 60 FR 61593, Nov. 30, 1995; 61 FR 50451, Sept. 26, 1996]

207.106 Additional requirements for major systems.

(b)(1)(A) The contracting officer is prohibited by 10 U.S.C. 2305(d)(4)(A) from requiring offers for development or production of major systems that would enable the Government to use technical data to competitively reprocure identical items or components of the system if the item or component were developed exclusively at private expense, unless the contracting officer determines that—

(*1*) The original supplier of the item or component will be unable to satisfy program schedule or delivery requirements;

(*2*) Proposals by the original supplier of the item or component to meet mobilization requirements are insufficient to meet the agency's mobilization needs; or

(*3*) The Government is otherwise entitled to unlimited rights in technical data.

(B) If the contracting officer makes a determination, under paragraphs (b)(1)(A) (*1*) and (*2*) of this section, for a competitive solicitation, 10 U.S.C. 2305(d)(4)(B) requires that the evaluation of items developed at private expense be based on an analysis of the total value, in terms of innovative design, life-cycle costs, and other pertinent factors, of incorporating such items in the system.

Subpart 207.4—Equipment Lease or Purchase

207.401 Acquisition considerations.

If the equipment will be leased for more than 60 days, the requiring activity must prepare and provide the contracting officer with the justification supporting the decision to lease or purchase.

207.470 Statutory requirements.

(a) *Limitation on contracts with terms of 18 months or more.* As required by 10 U.S.C. 2401a, the contracting officer shall not enter into any contract for any vessel, aircraft, or vehicle, through a lease, charter, or similar agreement with a term of 18 months or more, or extend or renew any such contract for a term of 18 months or more, unless the head of the contracting activity has—

(1) Considered all costs of such a contract (including estimated termination liability); and

(2) Determined in writing that the contract is in the best interest of the Government.

(b) *Leasing of commercial vehicles and associated equipment.* Except as provided in paragraph (a) of this section, the contracting officer may use leasing in the acquisition of commercial vehicles and associated equipment whenever the contracting officer determines that leasing of such vehicles is practicable and efficient (10 US.C. 2401a).

[61 FR 16879, Apr. 18, 1996, as amended at 61 FR 50451, Sept. 26, 1996]

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Sec.

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AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36306, July 31, 1991, unless otherwise noted.

208.001 Priorities for use of Government supply sources.

(a)(1)(v) See subpart 208.70, Coordinated Acquisition.

(2)(iii) Information on General Services Administration (GSA) schedules for maintenance, repair, and rehabilitation of personal property is in the GSA supply catalog. The types of personal property for which GSA, Federal Supply Service has schedule contracts for maintenance, repair, and/or rehabilitation are—

(*1*) Furniture (office, household, quarters, institutional, and hospital type);

(*2*) Typewriters (manual, electric, and electronic);

(*3*) Repair and maintenance of Government owned vehicles; and

(*4*) Tire retreading and repair (except aircraft).

208.002 Use of other Government supply sources.

(f) Detailed information on strategic and critical materials in excess of national stockpile requirements (e.g., metals, ores, chemicals) is available from the Defense National Stockpile Center, 8725 John J. Kingman Road, Suite 4616, Fort Belvoir, VA 22060–6223.

(g) Acquire helium (Pub. L. 86–777)—

(i) In bulk from—

(A) The Department of Interior (Bureau of Mines); or

(B) Eligible private helium distributors. A list of eligible private helium distributors is maintained by the Bureau of Mines, Helium Field Operations, 1100 South Fillmore Street, Amarillo, TX 79101.

(ii) In cylinders or trailers, from—

(A) The Department of Interior (Bureau of Mines); or

(B) Through GSA Federal Supply Schedule contracts.

[56 FR 36306, July 31, 1991, as amended at 62 FR 34121, June 24, 1997]

Subpart 208.4—Ordering From Federal Supply Schedules

208.404 Using schedules.

(a) When a schedule lists both foreign and domestic items that will meet the

needs of the requiring activity, the ordering office must apply the procedures of part 225 and FAR part 25, Foreign Acquisition. When purchase of an item of foreign origin is specifically required, the requiring activity must furnish the ordering office sufficient information to permit the determinations required by part 225 and FAR part 25 to be made.

208.404–1 Mandatory use.

The DoD will not be a mandatory user of any schedule unless individual DoD activities elect to provide annual requirements estimates to GSA and become mandatory users. Examples of areas where this approach may be applied are:

(1) Group 68—gases and chemicals;

(2) Group 26—pneumatic tires and inner tubes;

(3) Maintenance, repair, and/or rehabilitation of personal property; and

(4) ''Just-in-time'' arrangements for delivery of material directly from vendors to users.

208.404–2 Optional use.

Make maximum use of the schedules. Other procedures may be used if further competition is judged to be in the best interest of the Government in terms of quality, responsiveness, or cost.

208.405 Ordering office responsibilities.

208.405–2 Order placement.

(1) Ordering offices may use DD Form 1155, Order for Supplies or Services, to order items from schedules.

(2) Orders may be placed orally if—

(i) The order does not exceed the small purchase threshold at FAR 13.000;

(ii) The contractor agrees to furnish a delivery ticket for each shipment under the order (in the number of copies required by the ordering office). The ticket must include the—

(A) Contract number;

(B) Order number under the contract;

(C) Date of order;

(D) Name and title of person placing order;

(E) Itemized listing of supplies or services furnished; and

(F) Date of delivery or shipment.

(iii) Invoicing procedures are agreed upon. Optional methods of submitting invoices for payment are permitted, such as—

(A) An individual invoice with a receipted copy of the delivery ticket;

(B) A summarized monthly invoice covering all oral orders made during the month, with receipted copies of the delivery tickets (this option is preferred if there are many oral orders); or

(C) A contracting officer statement that the Government has received the supplies.

(3) For purchases where cash payment is an advantage, the use of imprest funds (see FAR 13.4) is authorized when—

(i) The order does not exceed the threshold at FAR 13.404(a); and

(ii) The contractor agrees to the procedure.

Subpart 208.7—Acquisition From the Blind and Other Severely Handicapped

208.705 Procedures.

Ordering offices may use DD Form 1155, Order for Supplies or Services, to place orders with central nonprofit agencies or workshops.

Subpart 208.70—Coordinated Acquisition

208.7000 Scope of subpart.

This subpart prescribes policy and procedures for acquisition of items for which contracting responsibility is assigned to one or more of the departments/agencies or the General Services Administration. Contracting responsibility is assigned through—

(a) The Coordinated Acquisition Program (commodity assignments are listed in appendix B); or

(b) The Integrated Materiel Management Program (assignments are in DoD 4140.26–M, Integrated Materiel Management for Consumable Items).

208.7001 Definitions.

For purposes of this subpart—

Acquiring department means the department, agency, or General Services Administration which has contracting

responsibility under the Coordinated Acquisition Program.

Integrated materiel management means assignment of acquisition management responsibility to one department, agency, or the General Services Administration for all of DoD's requirements for the assigned item. Acquisition management normally includes computing requirements, funding, budgeting, storing, issuing, cataloging, standardizing, and contracting functions.

Requiring department means the department or agency which has the requirement for an item.

208.7002 Assignment authority.

(a) Under the DoD Coordinated Acquisition Program, contracting responsibility for certain commodities is assigned to a single department, agency, or the General Services Administration (GSA). Commodity assignments are made—

(1) To the departments and agencies, by the Assistant Secretary of Defense (Production and Logistics);

(2) To the GSA, through agreement with GSA, by the Assistant Secretary of Defense (Production and Logistics);

(3) Outside the continental United States, by the Unified Commanders; and

(4) For acquisitions to be made in the United States for commodities not assigned under paragraphs (a) (1), (2), or (3) of this section, by agreement of agency heads (10 U.S.C. 2308).

(i) Agreement may be on either a one-time or a continuing basis. The submission of a military interdepartmental purchase request (MIPR) by a requiring activity and its acceptance by the contracting activity of another department, even though based on an oral communication, constitutes a one-time agreement.

(ii) Consider repetitive delegated acquisition responsibilities for coordinated acquisition assignment. If not considered suitable for coordinated acquisition assignment, formalize continuing agreements and distribute them to all activities concerned.

(b) Under the Integrated Materiel Management Program, assignments are made by the Assistant Secretary of Defense (Production and Logistics)—

(1) To the departments and agencies; and

(2) To the GSA, through agreement with GSA.

208.7002–1 Acquiring department responsibilities.

The acquiring department generally is responsible under coordinated acquisition for—

(a) Operational aspects of acquisition planning (Phasing the submission of requirements to contracting, consolidating or dividing requirements, analyzing the market, and determining patterns for the phased placement of orders to avoid unnecessary production fluctuations and meet the needs of requiring departments at the lowest price);

(b) Purchasing;

(c) Performing or assigning contract administration, including follow up and expediting of inspection and transportation; and

(d) Obtaining licenses under patents and settling patent infringement claims arising out of the acquisition. (Acquiring departments must obtain approval from the department whose funds are to be charged for obtaining licenses or settling claims.)

208.7002–2 Requiring department responsibilities.

The requiring department is responsible for—

(a) Ensuring compliance with the order of priority in FAR 8.001 for use of Government supply sources before submitting a requirement to the acquiring department for contracting action.

(b) Providing the acquiring department—

(1) The complete and certified documentation required by FAR 6.303–2(b). A requiring department official, equivalent to the appropriate level in FAR 6.304, must approve the documentation before submission of the military interdepartmental purchase request (MIPR) to the acquiring department;

(2) Any additional supporting data which the acquiring department contracting officer requests (e.g., the results of any market survey or why none was conducted, and actions the requiring department will take to overcome barriers to competition in the future);

(3) The executed determination and findings required by FAR 6.302–7(c)(1);

(4) When a requiring department requests an acquiring department to contract for supplies or services using full and open competition after exclusion of sources, all data required by FAR 6.202(b)(2);

(5) When the requiring department specifies a foreign end product, any determinations required by part 225 or FAR part 25;

(6) A complete definition of the requirements, including a list (or copies) of specifications, drawings, and other data required for the acquisition. The requiring department need not furnish Federal, military, departmental, or other specifications or drawings or data which are available to the acquiring department;

(7) Justification required by FAR 17.205(a) for any option quantities requested;

(8) A statement as to whether used or reconditioned material, former Government surplus property, or residual inventory will be acceptable, and if so—

(i) A list of any supplies that need not be new; and

(ii) The basis for determining the acceptability of such supplies, including an analysis of the factors at FAR 10.010(b);

(9) A statement as to whether the acquiring department may exceed the total MIPR estimate, and if so, by what amount;

(10) Unless otherwise agreed between the departments, an original and six copies of each MIPR and its attachments (except specifications, drawings, and other data); and

(11) A list of all persons who have had access to proprietary or source selection information (see FAR 3.104–9(e)).

208.7003 Applicability.

208.7003–1 Assignments under integrated material management (IMM).

(a) All items assigned for IMM must be acquired from the IMM manager except—

(1) Items purchased under circumstances of unusual and compelling urgency as defined in FAR 6.302–2. After such a purchase is made, the requiring activity must send one copy of the contract and a statement of the emergency to the IMM manager;

(2) Items for which the IMM manager assigns a supply system code for local purchase or otherwise grants authority to purchase locally; or

(3) When purchase by the requiring activity is in the best interest of the Government in terms of the combination of quality, timeliness, and cost that best meets the requirement. This exception does not apply to items—

(i) Critical to the safe operation of a weapon system;

(ii) With special security characteristics; or

(iii) Which are dangerous (e.g., explosives, munitions).

(b) When an item assigned for IMM is to be acquired by the requiring activity under paragraph (a)(3) of this subsection, the contracting officer must—

(1) Document the contract file with a statement of the specific advantage of local purchase for an acquisition exceeding the micro-purchase threshold in FAR part 13; and

(2) Ensure that a waiver is obtained from the IMM manager before initiating an acquisition exceeding the simplified acquisition threshold in FAR part 13, if the IMM assignment is to the General Services Administration (GSA), the Defense Logistics Agency (DLA), or the Army Materiel Command (AMC). Submit requests for waiver to—

(i) For GSA:

Commissioner (F), Federal Supply Service, Washington, DC 20406

(ii) For DLA:

Defense Construction Supply Center, ATTN: DCSC–BDA, P.O. Box 3990, Columbus, OH 43216–5000

Defense Electronics Supply Center, ATTN: DESC–ERM, 1507 Wilmington Pike, Dayton, OH 45444–5000

Defense Fuel Supply Center, ATTN: DFSC–OI, Cameron Station, VA 22304–6160

Defense General Supply Center, ATTN: DGSC–X, Richmond, VA 23297–5000

Defense Industrial Supply Center, ATTN: DISC–OPD, 700 Robbins Avenue, Philadelphia, PA 19111–5096

Defense Personnel Support Center, ATTN: DPSC–CSH, 2800 South 20th

Street, P.O. Box 8419, Philadelphia, PA 19101–8419

(iii) For AMC:

Commander, U.S. Army Materiel Command, ATTN: AMCLG–S, 5001 Eisenhower Avenue, Alexandria, VA 22333–0001

[60 FR 61593, Nov. 30, 1995]

208.7003–2 Assignments under coordinated acquisition.

Requiring departments must submit to the acquiring department all contracting requirements for items assigned for coordinated acquisition, except—

(a) Items obtained through the sources in FAR 8.001(a)(1) (i) through (vii);

(b) Items obtained under 208.7003–1(a);

(c) Requirements not in excess of the simplified acquisition threshold in FAR part 13, when contracting by the requiring department is in the best interest of the Government;

(d) In an emergency. When an emergency purchase is made, the requiring department must send one copy of the contract and a statement of the emergency to the contracting activity of the acquiring department;

(e) Requirements for which the acquiring department's contracting activity delegates contracting authority to the requiring department;

(f) Items in a research and development stage (as described in FAR part 35). Under this exception, the military departments may contract for research and development requirements, including quantities for testing purposes and items undergoing in-service evaluation (not yet in actual production, but beyond prototype). Generally, this exception applies only when research and development funds are used.

(g) Items peculiar to nuclear ordnance material where design characteristics or test-inspection requirements are controlled by the Department of Energy (DoE) or by DoD to ensure reliability of nuclear weapons.

(1) This exception applies to all items designed for and peculiar to nuclear ordnance regardless of agency control, or to any item which requires test or inspection conducted or controlled by DoE or DoD.

(2) This exception does not cover items used for both nuclear ordnance and other purposes if the items are not subject to the special testing procedures.

(h) Items to be acquired under FAR 6.302–6 (national security requires limitation of sources);

(i) Items to be acquired under FAR 6.302–1 (supplies available only from the original source for follow-on contract);

(j) Items directly related to a major system and which are design controlled by and acquired from either the system manufacturer or a manufacturer of a major subsystem;

(k) Items subject to rapid design changes, or to continuous redesign or modification during the production and/or operational use phases, which require continual contact between industry and the requiring department to ensure that the item meets the requirements:

(1) This exception permits the requiring department to contract for items of highly unstable design. For use of this exception, it must be clearly impractical, both technically and contractually, to refer the acquisition to the acquiring department. Anticipation that contracting by negotiation will be appropriate, or that a number of design changes may occur during contract performance is not in itself sufficient reason for using this exception.

(2) This exception also applies to items requiring compatibility testing, provided such testing requires continual contact between industry and the requiring department;

(l) Containers acquired only with items for which they are designed;

(m) One-time buy of a noncataloged item.

(1) This exception permits the requiring departments to contract for a nonrecurring requirement for a noncataloged item. This exception could cover a part or component for a prototype which may be stock numbered at a later date.

(2) This exception does not permit acquisitions of recurring requirements for an item, based solely on the fact that the item is not stock numbered, nor may it be used to acquire items which have only slightly different

characteristics than previously cataloged items.

[56 FR 36306, July 31, 1991, as amended at 60 FR 61593, Nov. 30, 1995]

208.7004 Procedures.

208.7004–1 Purchase authorization from requiring department.

(a) Requiring departments send their requirements to acquiring departments on either a DD Form 448, Military Interdepartmental Purchase Request (MIPR), or a DD Form 416, Requisition for Coal, Coke or Briquettes. A MIPR or a DD Form 416 is the acquiring department's authority to acquire the supplies or services on behalf of the requiring department.

(b) The acquiring department is authorized to create obligations against the funds cited in a MIPR without further referral to the requiring department. The acquiring department has no responsibility to determine the validity of a stated requirement in an approved MIPR, but it should bring apparent errors in the requirement to the attention of the requiring department.

(c) Changes that affect the contents of the MIPR must be processed as a MIPR amendment regardless of the status of the MIPR. The requiring department may initially transmit changes electronically or by some other expedited means, but must confirm changes by a MIPR amendment.

(d) The requiring department must submit requirements for additional line items of supplies or services not provided for in the original MIPR as a new MIPR. The requiring department may use a MIPR amendment for increased quantities only if—

(1) The original MIPR requirements have not been released for solicitation; and

(2) The acquiring department agrees.

208.7004–2 Acceptance by acquiring department.

(a) Acquiring departments formally accept a MIPR by DD Form 448–2, Acceptance of MIPR, as soon as practicable, but no later than 30 days after receipt of the MIPR. If the 30 day time limit cannot be met, the acquiring department must inform the requiring department of the reason for the delay, and the anticipated date the MIPR will be accepted. The acquiring department must accept MIPRs in writing before expiration of the funds.

(b) The acquiring department in accepting a MIPR will determine whether to use Category I (reimbursable funds citation) or Category II (direct funds citation) methods of funding.

(1) Category I method of funding is used under the following circumstances and results in citing the funds of the acquiring department in the contract—

(i) Delivery is from existing inventories of the acquiring department;

(ii) Delivery is by diversion from existing contracts of the acquiring department;

(iii) Production or assembly is through Government work orders in Government-owned plants;

(iv) Production quantities are allocated among users from one or more contracts, and the identification of specific quantities of the end item to individual contracts is not feasible at the time of MIPR acceptance;

(v) Acquisition of the end items involves separate acquisition of components to be assembled by the acquiring department;

(vi) Payments will be made without reference to deliveries of end items (e.g., cost-reimbursement type contracts and fixed price contracts with progress payment clauses); or

(vii) Category II method of funding is not feasible and economical.

(2) Category II method of funding is used in circumstances other than those in paragraph (b)(1) of this subsection. Category II funding results in citation of the requiring department's funds and MIPR number in the resultant contract.

(c) When the acquiring departments accepts a MIPR for Category I funding—

(1) The DD Form 448–2, Acceptance of MIPR, is the authority for the requiring department to record the obligation of funds;

(2) The acquiring department will annotate the DD Form 448–2 if contingencies, price revisions, or variations in quantities are anticipated. The acquiring department will periodically advise the requiring department, prior to submission of billings, of any

changes in the acceptance figure so that the requiring department may issue an amendment to the MIPR, and the recorded obligation may be adjusted to reflect the current price;

(3) If the acquiring department does not qualify the acceptance of a MIPR for anticipated contingencies, the price on the acceptance will be final and will be billed at time of delivery;

(4) Upon receipt of the final billing (SF 1080, Voucher for Transferring Funds), the requiring department may adjust the fiscal records accordingly without authorization from or notice to the acquiring department.

(d) When the MIPR is accepted for Category II funding, a conformed copy of the contract (see 204.802(1)(ii)) is the authority to record the obligation. When all awards have been placed to satisfy the total MIPR requirement, any unused funds remaining on the MIPR become excess to the acquiring department. The acquiring department will immediately notify the requiring department of the excess funds by submitting an Acceptance of MIPR (DD Form 448–2). This amendment is authorization for the requiring department to withdraw the funds. The acquiring department is prohibited from further use of such excess funds.

(e) When the acquiring department requires additional funds to complete the contracting action for the requiring department, the request for additional funds must identify the exact items involved, and the reason why additional funds are required. The requiring department shall act quickly to—

(1) Provide the funds by an amendment of the MIPR; or

(2) Reduce the requirements.

(f) The accepting activity of the acquiring department shall remain responsible for the MIPR even though that activity may split the MIPR into segments for action by other contracting activities.

208.7004–3 Use of advance MIPRs.

(a) An advance MIPR is an unfunded MIPR provided to the acquiring department in advance of the funded MIPR so that initial steps in planning the contract action can begin at an earlier date.

(b) In order to use an advance MIPR, the acquiring department and the requiring department must agree that its use will be beneficial. The departments may execute a blanket agreement to use advance MIPRs.

(c) The requiring department shall not release an advance MIPR to the acquiring department without obtaining proper internal approval of the requirement.

(d) When advance MIPRs are used, mark ''ADVANCE MIPR'' prominently on the DD Form 448.

(e) For urgent requirements, the advance MIPR may be transmitted electronically.

(f) On the basis of an advance MIPR, the acquiring department may take the initial steps toward awarding a contract, such as obtaining internal coordination and preparing an acquisition plan. Acquiring departments may determine the extent of these initial actions but shall not award contracts on the basis of advance MIPRs.

208.7004–4 Cutoff dates for submission of Category II MIPRs.

(a) Unless otherwise agreed between the departments, May 31 is the cutoff date for the receipt of MIPRs citing expiring appropriations which must be obligated by September 30 of that fiscal year. If circumstances arise which require the submission of MIPRs citing expiring appropriations after the cutoff date, the requiring department will communicate with the acquiring department before submission to find out whether the acquiring department can execute a contract or otherwise obligate the funds by the end of the fiscal year. Acquiring departments will make every effort to obligate funds for all such MIPRs accepted after the cutoff date. However, acceptance of a late MIPR does not constitute assurance by the acquiring department that all such funds will be obligated.

(b) Nothing in these instructions is intended to restrict the processing of MIPRs when the acquiring department is capable of executing contracts or otherwise obligating funds before the end of the fiscal year.

(c) The May 31 cutoff date does not apply to MIPRs citing continuing appropriations.

208.7004–5 Notification of inability to obligate on Category II MIPRs.

On August 1, the acquiring department will advise the requiring department of any Category II MIPRs on hand citing expiring appropriations they will be unable to obligate prior to the fund expiration date. If an unforeseen situation develops after August 1 which will prevent execution of a contract, the acquiring department will notify the requiring department as quickly as possible and return the MIPR. The letter of transmittal returning the MIPR will authorize purchase by the requiring department and state the reason that the acquisition could not be accomplished.

208.7004–6 Cancellation of requirements.

(a) *Category I MIPRs.* The requiring department will notify the acquiring department by electronic or other immediate means when cancelling all or part of the supplies or services requested in the MIPR. Within 30 days, the acquiring department will notify the requiring department of the quantity of items available for termination and the amount of funds in excess of the estimated settlement costs. Upon receipt of this information, the requiring department will issue a MIPR amendment to reduce the quantities and funds accordingly.

(b) *Category II MIPRs.* The requiring department will notify the acquiring department electronically or by other immediate means when cancelling all or any part of the supplies or services requested in the MIPR.

(1) If the acquiring department has not entered into a contract for the supplies or services to be cancelled, the acquiring department will immediately notify the requiring department. Upon receipt of such notification, the requiring department shall initiate a MIPR amendment to revoke the estimated amount shown on the original MIPR for the cancelled items.

(2) If the items to be cancelled have already been placed under contract—

(i) As soon as practicable, but in no event more than 45 days after receipt of the cancellation notice from the requiring department, the contracting officer shall issue a termination data letter to the requiring department (original and four copies) containing, as a minimum, the information in Table 8–1, Termination Data Letter.

(ii) The termination contracting officer (TCO) will review the proceedings at least every 60 days to reassess the Government's probable obligation. If any additional funds are excess to the probable settlement requirements, or if it appears that previous release of excess funds will result in a shortage of the amount which will be required for settlement, the TCO will promptly notify the contracting office which will amend the termination data letter. The requiring department will process a MIPR amendment to reflect the reinstatement of funds within 30 days after receiving the amended termination data letter.

(iii) Upon receipt of a copy of the termination settlement agreement, the requiring department will prepare a MIPR amendment, if required, to remove any remaining excess funds.

TABLE 8–1, TERMINATION DATA LETTER

SUBJECT: Termination Data Re:
Contract No. _____
Termination No. _____
Contract _____
(a) As termination action is now in progress on the above contract, the following information is submitted:
(1) Brief Description of items terminated.
(2) You are notified that the sum of $_____ is available for release under the subject contract. This sum represents the difference between $_____, the value of items terminated under the contract, and $_____, estimated to be required for settlement of the terminated contract. The estimated amount available for release is allocated by the appropriations cited on the contract as follows:
MIPR NO. _____ ACCOUNTING CLASSIFICATION _____ AMOUNT _____
Total available for release at this time $_____
(b) Request you forward an amendment to MIPR _____ on DD Form 448–2 to reflect the reduced quantity and amount of funds available for release.
(c) Periodic reviews (not less than 60 days) will be made as termination proceedings progress to redetermine the Government's probable obligation.

_____
Contracting Officer

208.7004–7 Termination for default.

(a) When the acquiring department terminates a contract for default, they will ask the requiring department if the supplies or services to be terminated are still required so that repurchase action can be started.

(b) The requiring department will not deobligate funds on a contract terminated for default until receipt of a settlement modification or other written evidence from the acquiring department authorizing release of funds.

(c) On the repurchase action, the acquiring department will not exceed the unliquidated funds on the defaulted contract without receiving additional funds from the requiring department.

208.7004–8 Transportation funding.

The requiring department will advise the acquiring department or the transportation officer in the contract administration office of the fund account to be charged for transportation costs. The requiring department may cite the fund account on each MIPR or provide the funding cite to the transportation officer at the beginning of each fiscal year for use on Government bills of lading. When issuing a Government bill of lading, show the requiring department as the department to be billed and cite the appropriate fund account.

208.7004–9 Status reporting.

(a) The acquiring department will maintain a system of MIPR follow up to inform the requiring department of the current status of its requests. In addition, the contract administration office will maintain a system of follow up in order to advise the acquiring department on contract performance.

(b) If requested by the requiring department, the acquiring department will furnish the requiring department a copy of the solicitation when the MIPR is satisfied through Category II funding.

(c) Any reimbursement billings, shipping document, contractual documents, project orders, or related documentation furnished to the requiring department will identify the requiring department's MIPR number, quantities of items, and funding information.

208.7004–10 Administrative costs.

The acquiring department bears the administrative costs of acquiring supplies for the requiring department. However, when an acquisition responsibility is transferred to another department, funds appropriated or to be appropriated for administrative costs will transfer to the successor acquiring department. The new acquiring department must assume budget cognizance as soon as possible.

208.7005 MIPRs.

Instructions on preparation and use of DD Form 448, Military Interdepartmental Purchase Request, and DD Form 448–2, Acceptance of MIPR, are in 253.208.

208.7006 Coordinated acquisition assignments.

See appendix B for coordinated acquisition assignments.

Subpart 208.71—Acquisition for National Aeronautics and Space Administration (NASA)

208.7100 Authorization.

NASA is authorized by Public Law 85–568 to use the acquisition services, personnel, equipment, and facilities of DoD departments and agencies with their consent, with or without reimbursement, and on a similar basis to cooperate with the departments/agencies in the use of acquisition services, equipment, and facilities.

208.7101 Policy.

Departments and agencies will—

(a) Cooperate fully with NASA in making acquisition services, equipment, personnel, and facilities available on the basis of mutual agreement.

(b) Not claim reimbursement for administrative costs incident to acquisitions for NASA, unless agreed otherwise prior to the time services are performed.

208.7102 Procedures.

(a) When contracting or performing field service functions for NASA, the departments and agencies will use

their own methods, except when otherwise required by the terms of the agreement.

(b) Departments and agencies normally will use their own funds when contracting for or performing services for NASA and will not cite NASA funds on any defense obligation or payment document.

208.7103 Purchase request and acceptance.

(a) NASA will use NASA Form 523, NASA-Defense Purchase Request, to request acquisition of supplies or services.

(b) Except as provided in paragraph (d) of this section, departments and agencies will respond within 30 days to a NASA purchase request by forwarding DD Form 448–2, Acceptance of MIPR. Forward each DD Form 448–2 in quadruplicate and indicate action status as well as the name and address of the DoD acquisition activity for future use by the NASA initiator.

(c) To the extent feasible, all documents related to the NASA action will reference the NASA-Defense Purchase Request number and the item number when appropriate.

(d) Departments and agencies are not required to accept NASA-Defense Purchase Requests for common-use standard stock items which the supplying department has on hand or on order for prompt delivery at published prices.

208.7104 Changes in estimated total prices.

When a department or agency determines that the estimated total price (Block 6F, NASA Form 523) for NASA items is not sufficient to cover the required reimbursement, or is in excess of the amount required, the department/agency will forward a request for amendment to the NASA originating office. Indicate in the request a specific dollar amount, rather than a percentage, and include justification for any upward adjustment requested. Upon approval of a request, NASA will forward an amendment of its purchase request to the contracting activity.

208.7105 Payments.

Departments and agencies will submit SF 1080, Voucher for Transferring Funds, billings to the NASA office designated in Block 9 of the NASA-Defense Purchase Request, except where agreements provide that reimbursement is not required. Departments and agencies will support billings in the same manner as billings between departments and agencies.

Subpart 208.72—Industrial Preparedness Production Planning

208.7201 Definitions.

As used in this subpart—

Industrial base means that part of the total privately-owned and Government-owned industrial production and maintenance capacity of the United States and Canada, which will be available during national emergencies to manufacture and repair items required by the departments.

Industrial preparedness production planning means planning designed to maintain an adequate industrial base to support DoD requirements for selected essential military items in a national emergency.

National emergency means a condition declared by the President or the Congress which authorizes certain emergency action in the national interest, including partial or total mobilization of national resources.

Planned item means any item selected for industrial preparedness planning under the criteria of DoDI 4005.3, Industrial Preparedness Planning.

Planned producer means an industrial firm which has agreed by either nonbinding memorandum of understanding or binding contract/contract clause to provide production capacity data, to maintain existing capacity for a negotiated period of time, and to accept contracts for planned items upon the request of the Government.

208.7202 General.

(a) Under the Industrial Preparedness Production Planning (IPPP) program, DoD components and industry work together to ensure essential military items are available during an emergency.

(b) Departments and agencies select weapon systems and items for planning in accordance with DoDI 4005.3, Industrial Preparedness Planning. Planning

is conducted only with U.S. or Canadian sources.

(c) The use of privately-owned facilities is preferred to minimize the need for Government investment. Departments and agencies will include Government-owned production facilities in the industrial base only when—

(1) Private industry is unable to provide the facilities necessary to support DoD requirements; or

(2) The facilities are necessary—

(i) For reasons of national security; or

(ii) To ensure a quick response capability to meet fluctuating demands.

208.7203 Authority.

Authority under current contracting procedures to accomplish industrial planning actions includes—

(a) Leasing of Government-owned property to planned emergency producers under the authority of the Military Leasing Act of 1947, 10 U.S.C. 2667;

(b) Acquisitions in the interest of national defense under FAR 6.202(a)(2), or in case of a national emergency or to achieve industrial mobilization under FAR 6.302–3;

(c) Acquisition of items restricted under 225.7010 and 225.71;

(d) Use of multiyear contracting (FAR subpart 17.1);

(e) Providing Government production and research property to contractors; and

(f) Use of direct payment for idle facilities or idle capacities reserved for defense mobilization production (FAR 31.205–17(d)).

[56 FR 36306, July 31, 1991, as amended at 57 FR 42629, Sept. 15, 1992; 62 FR 34121, June 24, 1997]

208.7204 Procedures.

(a) Planned producers shall be solicited for all acquisitions of their planned items, when the acquisition is over the small purchase threshold in FAR 13.000, except as provided in FAR or DFARS.

(b) The contracting officer may contract for industrial planning efforts for selected essential military items. These efforts may include, but are not limited to, the maintenance of Government-owned industrial facilities (real and personal property) or production data packages. These planning efforts may be acquired through an individual service contract or as a line item on a contract for a planned item.

Subpart 208.73—Use of Government-Owned Precious Metals

208.7301 Definitions.

As used in this subpart—

Defense Industrial Supply Center (DISC) means the Defense Logistics Agency field activity located at 700 Robbins Avenue, Philadelphia, PA 19111–5096, which is the assigned commodity integrated material manager for refined precious metals and is responsible for the storage and issue of such material.

Dual pricing evaluation procedure means a procedure where offerors submit two prices for precious metals bearing items—one based on Government-furnished precious metals and one based on contractor-furnished precious metals. The contracting officer evaluates the prices to determine which is in the Government's best interest.

Precious Metals Indicator Code (PMIC) means a single digit, alpha-numeric code assigned to national stock numbered items in The Defense Integrated Data System Total Item Record used to indicate the presence or absence of precious metals in the item. PMICs and the content value of corresponding items are listed in DoDD 4100.39M, Defense Integrated Data System (DIDS) Procedures Manual, chapter 10, Table 160.

Refined precious metal means recovered silver, gold, platinum, palladium, iridium, rhodium, or ruthenium, in bullion, granulation or sponge form, which has been purified to at least .999 percentage of fineness.

208.7302 Policy.

DoD policy is for maximum participation in the Precious Metals Recovery Program (PMRP). DoD components shall furnish recovered precious metals contained in the DISC inventory to production contractors rather than use contractor-furnished precious metals whenever the contracting officer determines it to be in the Government's best

interest. (See DoDD 4160.22, Recovery and Utilization of Precious Metals.)

208.7303 Procedures.

(a) Item managers and contracting officers will use the PMIC and/or other relevant data furnished with a purchase request to determine the applicability of this subpart.

(b) When an offeror advises of a precious metals requirement, the contracting officer shall use the procedures in chapter X of DoD 4160.21–M, Defense Utilization and Disposal Manual, to determine availability of required precious metal assets and current government-furnished materiel (GFM) unit prices. If the precious metals are available, the contracting officer shall evaluate offers and award the contract on the basis of the offer which is in the best interest of the Government.

(c) When the clause prescribed by 208.7305 is included in a solicitation, the contracting officer will ensure that section B, Schedule of Supplies or Services and Prices, is structured to—

(1) Permit insertion of alternate prices for each deliverable contract line item number that uses precious metals; and

(2) Use dual pricing evaluation procedures.

208.7304 Refined precious metals.

The following refined precious metals are currently managed by DISC:

Precious metal	National Stock No. (NSN)
Silver Bullion/Granules	9660–00–106–9432
Gold Bullion/Granules	9660–00–042–7733
Platinum Granules	9660–00–042–7768
Platinum Sponge	9660–00–151–4050
Palladium Granules	9660–00–042–7765
Palladium Sponge	9660–01–011–0320
Rhodium Sponge	9660–01–011–2625
Iridium Sponge	9660–01–011–1937
Ruthenium Sponge	9660–01–039–0313

208.7305 Contract clause.

(a) Use the clause at 252.208–7000, Intent to Furnish Precious Metals as Government-Furnished Material, in all solicitations and contracts except—

(1) When the contracting officer has determined that the required precious metals are not available from DISC;

(2) When the contracting officer knows that the items being acquired do not require precious metals in their manufacture; or

(3) For acquisitions below the small purchase threshold in FAR 13.000.

(b) To make the determination in paragraph (a)(1) of this section, the contracting officer shall consult with the end item inventory manager and comply with the procedures in Chapter X, DoD 4160.21–M, Defense Utilization and Disposal Manual.

PART 209—CONTRACTOR QUALIFICATIONS

Sec.

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AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36313, July 31, 1991, unless otherwise noted.

Subpart 209.1—Responsible Prospective Contractors

209.101 Definitions.

''Entity controlled by a foreign government,'' ''foreign government,'' and ''proscribed information,'' are defined in the provision at 252.209–7002, Disclosure of Ownership or Control by a Foreign Government.

[59 FR 51132, Oct. 7, 1994]

209.103 Policy.

(a)(i) Do not deny award to contractors subject to on-site inspection under the Intermediate-Range Nuclear Forces (INF) Treaty, or similar treaty, due to the actual or potential presence of Soviet inspectors at the contractor's facility unless—

(A) Necessary for reasons of national security;

(B) The decision is based on full information, including comment from the potential contractor or subcontractor on the security issues involved; and

(C) The department or agency acquisition executive reviews the decision and the Under Secretary of Defense (Acquisition & Technology) approves the decision.

(ii) Make any decision to deny consideration for award under paragraph (a)(i) of this section as early as possible in the acquisition process. Notify the firm in writing of any decision not to consider the firm for award of a contract or subcontract.

(c) The additional cost of contract administration and audit due to a contractor's performance risk may be considered in evaluating the contractor's price.

[56 FR 36313, July 31, 1991, as amended at 60 FR 29497, June 5, 1995; 61 FR 50452, Sept. 26, 1996]

209.103–70 Contract clause.

Use the clause at 252.209–7000, Acquisition from Subcontractors Subject to On-Site Inspection Under the Intermediate-Range Nuclear Forces (INF) Treaty, in all solicitations and contracts exceeding the simplified acquisition threshold, except solicitations and contracts for commercial items.

[60 FR 61593, Nov. 30, 1995, as amended at 61 FR 50452, Sept. 26, 1996]

209.104 Standards.

209.104–1 General standards.

(e) For cost-reimbursement or incentive type contracts, or contracts which provide for progress payments based on costs or on a percentage or stage of completion, the prospective contractor's accounting system and related internal controls must provide reasonable assurance that—

(i) Applicable laws and regulations are complied with;

(ii) The accounting system and cost data are reliable;

(iii) Risk of misallocations and mischarges are minimized; and

(iv) Contract allocations and charges are consistent with invoice procedures.

(g)(i) *Ownership or control by the government of a terrorist country.* (A) Under 10 U.S.C. 2327(b), a contracting officer shall not award a contract to a firm or to a subsidiary of a firm when a foreign government—

(*1*) Either directly or indirectly, has a significant interest—

(*i*) In the firm; or

(*ii*) In the subsidiary; and

(*2*) Has been determined by the Secretary of State under 50 U.S.C. App. 2405(j)(1)(A) to be a government of a country that has repeatedly provided support for acts of international terrorism.

(B) The Secretary of Defense may waive the prohibition in paragraph (g)(i)(A) of this subsection in accordance with 10 U.S.C. 2327(c). This waiver authority may not be delegated.

(ii) *Ownership or control by a foreign government when access to proscribed information is required to perform the contract.* (A) Under 10 U.S.C. 2536(a), no DoD contract under a national security program may be awarded to an entity controlled by a foreign government if that entity requires access to proscribed information to perform the contract.

(B) Whenever the contracting officer has a question about application of the provision at 252.209–7002, the contracting officer may seek advice from the Director, Defense Security Programs, Office of the Assistant Secretary of Defense for Command, Control, Communications and Intelligence.

(C) In accordance with 10 U.S.C. 2536(b)(1)(A), the Secretary of Defense may waive the prohibition in paragraph (g)(ii)(A) of this subsection upon determining that the waiver is essential to the national security interest of the United States. The Secretary has delegated authority to grant this waiver to the Assistant Secretary of Defense Command, Control, Communications and Intelligence. Waiver requests, prepared by the requiring activity in coordination with the contracting officer, shall be processed through the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition & Technology), and shall include a proposed national interest determination. The proposed national interest determination, prepared by the requiring activity in coordination with the contracting officer, shall include:

(*1*) Identification of the proposed awardee, with a synopsis of its foreign ownership (include solicitation and other reference numbers to identify the action);

(*2*) General description of the acquisition and performance requirements;

(*3*) Identification of the national security interests involved and the ways award of the contract helps advance those interests;

(*4*) The availability of another entity with the capacity, capability and technical expertise to satisfy defense acquisition, technology base, or industrial base requirements; and

(*5*) A description of any alternate means available to satisfy the requirement, e.g., use of substitute products or technology or alternate approaches to accomplish the program objectives.

(D) In accordance with 10 U.S.C. 2536(b)(1)(B), the Secretary of Defense may, in the case of a contract awarded for environmental restoration, remediation, or waste management at a DoD facility, waive the prohibition in paragraph (g)(ii)(A) of this subsection upon—

(1) Determining that—

(i) The waiver will advance the environmental restoration, remediation, or waste management objectives of DoD and will not harm the national security interests of the United States; and

(ii) The entity to which the contract is awarded is controlled by a foreign government with which the Secretary is authorized to exchange Restricted Data under section 144c. of the Atomic Energy Act of 1954 (42 U.S.C. 2164(c)); and

(2) Notifying Congress of the decision to grant the waiver. The contract may be awarded only after the end of the 45-day period beginning on the date the notification is received by the appropriate Congressional committees.

[58 FR 28464, May 13, 1993, as amended at 59 FR 51131, 51132, Oct. 7, 1994; 60 FR 29497, June 5, 1995; 62 FR 34121, June 24, 1997]

209.104–4 Subcontractor responsibility.

Generally, the Canadian Commercial Corporation's (CCC) proposal of a firm as its subcontractor is sufficient basis for an affirmative determination of responsibility. However, when the CCC determination of responsibility is not consistent with other information available to the contracting officer, the contracting officer shall request from CCC and any other sources whatever additional information is necessary to make the responsibility determination.

209.104–70 Solicitation provisions.

(a) Use the provision at 252.209–7001, Disclosure of Ownership or Control by the Government of a Terrorist Country, in all solicitations expected to result in contracts of $100,000 or more.

(b) Use the provision at 252.209–7002, Disclosure of Ownership or Control by a Foreign Government, in all solicitations, including those subject to the procedures in FAR part 13, when access to proscribed information is necessary to perform a DoD contract under a national security program.

[58 FR 28464, May 13, 1993, as amended at 59 FR 51131, Oct. 7, 1994; 62 FR 34122, June 24, 1997]

209.106 Preaward surveys.

209.106–1 Conditions for preaward surveys.

(a) If a preaward survey is requested, include the rationale in block 23 of the SF 1403, Preaward Survey of Prospective Contractor (General).

[60 FR 61593, Nov. 30, 1995]

209.106–2 Requests for preaward surveys.

(1) The surveying activity is the cognizant contract administration office as listed in DLAH 4105.4, DoD Directory of Contract Administration Services Components. When information is required as part of the survey on the adequacy of the contractor's accounting system or its suitability for administration of the proposed type of contract, the surveying activity will obtain the information from the auditor.

(2) Limited information may be requested by telephone.

(3) The contracting officer may request a formal survey by telephone but must confirm immediately with SF 1403, Preaward Survey of Prospective Contractor (General). For a formal survey, send original and three copies of SF 1403, including necessary drawings and specifications.

(a) List additional factors in item H, section III of the SF 1403 and explain them in block 23. For example—

(i) Information needed to determine a prospective contractor's eligibility under the Walsh-Healey Public Contracts Act. (Note that the Walsh-Healey Public Contracts Act, block 12 of section I, only indicates what the contractor has represented its classification to be under Walsh-Healey.)

(ii) Evaluation of a contractor as a planned producer when the offered item is or may appear on the Industrial Preparedness Planning List (IPPL). When the preaward survey results in a recommendation for award, ask the office responsible for industrial preparedness planning to consider designating the prospective contractor as a planned producer. If the item is already on the IPPL or the prospective contractor is already a planned producer, note the information in block 23.

(iii) Evaluation of the prospective contractor's performance against small business subcontracting plans.

(c) On base level preaward surveys, technical personnel from the requiring installation should participate when there is concern about the ability of a prospective contractor to perform a base level service or construction contract.

(d) Allow more time for—

(i) Complex items;

(ii) New or inexperienced DoD contractors; and

(iii) Surveys with time-consuming requirements, e.g., secondary survey, accounting system review, financial capability analysis, or purchasing office participation.

(e) Only request those factors essential to the determination of responsibility. See 253.209–1(a) for an explanation of the factors in section III, blocks 19 and 20 of the SF 1403.

[56 FR 36313, July 31, 1991, as amended at 58 FR 28464, May 13, 1993]

Subpart 209.2—Qualifications Requirements

209.202 Policy.

(a)(1) The inclusion of qualification requirements in specifications for products which are to be included on a Qualified Products List, or manufactured by business firms included on a Qualified Manufacturers List, requires approval by the departmental standardization office in accordance with DoD Manual 4120.3–M, Defense Standardization Program Policies and Procedures. The inclusion of other qualification requirements in an acquisition or group of acquisitions requires approval by the chief of the contracting office.

[60 FR 61593, Nov. 30, 1995]

Subpart 209.3—First Article Testing and Approval

209.303 Use.

(d) The contracting officer may require that first articles be manufactured using the same facilities, production processes, methods, and materials to be used for production units under the contract.

209.305 Risk.

The contracting officer may give this authorization to a contractor only after approval by a level higher than the contracting officer.

209.306 Solicitation requirements.

(a)(1) To be sure that the contractor and the Government clearly understand and interpret contract terms and conditions in the same manner, avoid

describing first article requirements exclusively in general terms such as ''visual,'' ''dimensional,'' ''workmanship,'' or ''specification compliance.''

209.308 Contract clauses.

Alternate I of the clauses at FAR 52.209–3, First Article Approval—Contractor Testing, or 52.209–4, First Article Approval—Government Testing, as appropriate, may be used when—

(1) The form, fit, or function of the product would be adversely affected by contractor changes in the production facilities, processes, methods, or materials subsequent to first article approval; and

(2) The Government has relied upon first article testing in the absence of complete design specifications to supplement a performance specification; or

(3) It is essential to have an approved first article to serve as a manufacturing standard.

Subpart 209.4—Debarment, Suspension, and Ineligibility

209.402 Policy.

(d) The uniform suspension and debarment procedures to be followed by all debarring and suspending officials are set out in appendix H to this chapter.

(e) The department or agency shall provide a copy of the Debarment and Suspension Procedures at DFARS appendix H to this chapter to contractors at the time of their suspension or when they are proposed for debarment, and upon request to other interested parties.

[59 FR 27668, May 27, 1994]

209.403 Definitions.

Debarring official. (1) For DoD, the designees are—

Army—Commander, U.S. Army Legal Services Agency
Navy—the General Counsel of the Department of the Navy
Air Force—Deputy General Counsel (Contractor Responsibility)
Defense Advanced Research Projects Agency—The Director
Defense Information Systems Agency—The General Counsel
Defense Logistics Agency—The Special Assistant for Contracting Integrity
Defense Mapping Agency—The General Counsel
Defense Special Weapons Agency—The Director
National Security Agency—The Director
Ballistic Missile Defense Organization—The General Counsel
Overseas installations—as designated by the agency head

(2) Overseas debarring officials—

(i) Are authorized to debar or suspend contractors located within the official's geographic area of responsibility under any delegation of authority they receive from their agency head.

(ii) Debar or suspend in accordance with the procedures in FAR subpart 9.4 or under modified procedures approved by the agency head based on consideration of the laws or customs of the foreign countries concerned.

(iii) In addition to the bases for debarment in FAR 9.406–2, may consider the following additional bases—

(A) The foreign country concerned determines that a contractor has engaged in bid-rigging, price-fixing, or other anti-competitive behavior; or

(B) The foreign country concerned declares the contractor to be formally debarred, suspended, or otherwise ineligible to contract with that foreign government or its instrumentalities.

[56 FR 36313, July 31, 1991, as amended at 56 FR 67212, Dec. 30, 1991; 59 FR 27669, May 27, 1994; 60 FR 61593, Nov. 30, 1995; 61 FR 50452, Sept. 26, 1996]

209.405 Effect of listing.

Under 10 U.S.C. 2393b, when a department or agency determines that a compelling reason exists for it to conduct business with a contractor that is on the list of parties excluded from procurement programs, it shall provide written notice of the determination to the General Services Administration, Office of Acquisition Policy. Examples of compelling reasons are—

(1) Only a listed contractor can provide the supplies or services;

(2) Urgency requires contracting with a listed contractor;

(3) The contractor and a department or agency have an agreement covering the same events which resulted in the listing and the agreement includes the

department/agency decision not to debar or suspend the contractor; or

(4) The national defense requires continued business dealings with the listed contractor.

209.405–1 Continuation of current contracts.

(b) Unless the agency head makes a written determination that a compelling reason exists to do so, ordering activities shall not—

(i) Place orders exceeding the guaranteed minimum under indefinite quantity contracts: or

(ii) When the agency is an optional user, place orders against Federal Supply Schedule contracts.

(c) This includes exercise of options.

[60 FR 29497, June 5, 1995, as amended at 60 FR 61593, Nov. 30, 1995]

209.406 Debarment.

209.406–1 General.

(a)(i) When the debarring official decides that debarment is not necessary, the official may require the contractor to enter into a written agreement which includes—

(A) A requirement for the contractor to establish, if not already established, and to maintain the standards of conduct and internal control systems prescribed by subpart 203.70; and

(B) Other requirements the debarring official considers appropriate.

(ii) Before the debarring official decides not to suspend or debar in the case of an indictment or conviction for a felony, the debarring official must determine that the contractor has addressed adequately the circumstances that gave rise to the misconduct, and that appropriate standards of ethics and integrity are in place and are working.

[57 FR 14992, Apr. 23, 1992]

209.406–2 Causes for debarment.

(a) Any person shall be considered for debarment if criminally convicted of intentionally affixing a label bearing a ''Made in America'' inscription to any product sold in or shipped to the United States that was not made in America (10 U.S.C. 2410f).

(i) The debarring official will make a determination concerning debarment not later than 90 days after determining that a person has been so convicted.

(ii) In cases where the debarring official decides not to debar, the debarring official will report that decision to the Director of Defense Procurement who will notify Congress within 30 days after the decision is made.

[58 FR 28464, May 13, 1993]

209.406–3 Procedures.

(a) *Investigation and referral.* (i) The contracting officer shall prepare a report containing the information required by paragraph (a)(ii) of this subsection when—

(A) A contractor has committed, or is suspected of having committed, any of the acts described in FAR 9.406–2 and 9.407–2;

(B) FAR 49.106 requires a report;

(C) Part 203 requires a report;

(D) The Government suspects a contractor of violating the Buy American Act (see FAR 25.204); or

(E) The Government suspects a contractor of attempting to evade the prohibitions of debarment or suspension by changes of address, multiple addresses, formation of new companies, or by other devices.

(ii) Include the following information, when available, in the report required by paragraph (a)(i) of this subsection—

(A) Name, address, and telephone number of the point of contact for the activity making the report;

(B) Name, contractor and Government entity (CAGE) code, and address of the contractor;

(C) Name and addresses of the members of the board, principal officers, partners, owners, and managers;

(D) Name and addresses of all known affiliates, subsidiaries, or parent firms, and the nature of the business relationship;

(E) For each contract affected by the conduct being reported—

(*1*) The contract number;

(*2*) All office identifying numbers or symbols;

(*3*) Description of supplies or services;

(*4*) The amount;

(*5*) The percentage of completion;

(*6*) The amount paid the contractor;

(*7*) Whether the contract is assigned under the Assignment of Claims Act and, if so, to whom; and

(*8*) The amount due the contractor;

(F) For any other contracts outstanding with the contractor or any of its affiliates—

(*1*) The contract number;

(*2*) The amount;

(*3*) The amounts paid the contractor;

(*4*) Whether the contract is assigned under the Assignment of Claims Act and, if so, to whom; and

(*5*) The amount due the contractor;

(G) A complete summary of all pertinent evidence and the status of any legal proceedings involving the contractor;

(H) An estimate of any damages sustained by the Government as a result of the contractor's action (explain how the estimate was calculated);

(I) The comments and recommendations of the contracting officer and of each higher level contracting review authority regarding—

(*1*) Whether to suspend or debar the contractor;

(*2*) Whether to apply limitations to the suspension or debarment;

(*3*) The period of any recommended debarment; and

(*4*) Whether to continue any current contracts with the contractor (explain why a recommendation regarding current contracts is not included);

(J) When appropriate, as an enclosure to the report—

(*1*) A copy or extracts of each pertinent contract;

(*2*) Witness statements or affidavits;

(*3*) Copies of investigative reports;

(*4*) Certified copies of indictments, judgments, and sentencing actions; and

(*5*) Any other appropriate exhibits or documentation.

(iii) Send three copies of each report, including enclosures, to the debarring official in 209.403.

209.470 Military recruiting on campus.

209.470–1 Policy.

(a)(1) Section 558 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337) provides that no funds available to DoD may be provided by grant or contract to any institution of higher education that has a policy of denying or that effectively prevents the Secretary of Defense from obtaining for military recruiting purposes—

(i) Entry to campuses or access to students on campuses; or

(ii) Access to directory information pertaining to students.

(2) Section 541 of the National Defense Authorization Act for Fiscal Year 1996 (10 U.S.C. 983) provides that no funds appropriated or otherwise available to DoD may be obligated by contract or by grant, including a grant of funds to be available for student aid, to any institution of higher education that, as determined by the Secretary of Defense, has an anti-ROTC policy and at which, as determined by the Secretary, the Secretary would otherwise maintain or seek to establish a unit of the Senior Reserve Officer Training Corps, or at which the Secretary would otherwise enroll or seek to enroll students for participation in a unit of the Senior Reserve Officer Training Corps at another nearby institution of higher education. This prohibition applies to new contracts and all contract modifications. (See 243.105.) This prohibition shall cease to apply to that institution upon a determination by the Secretary that the institution no longer has an anti-ROTC policy.

(b) Institutions of higher education that are determined under 32 CFR part 216 to have the policy or practice in paragraph (a)(1) or (a)(2) of this subsection shall be listed as ineligible on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs published by the General Services Administration. (See FAR 9.404.)

(c) In cases where a determination is made under 32 CFR part 216 that specific subordinate elements of an institution of higher education, rather than the institution as a whole, have the policy or practice in paragraph (a)(1) or (a)(2) of this subsection, 32 CFR part 216 provides that the prohibition on use of DoD funds applies only to those subordinate elements.

[61 FR 25408, May 21, 1996]

209.470–2 Procedures.

(a) Agencies shall not solicit offers from, award contracts to, or consent to

subcontracts with ineligible contractors.

(b) After a determination of ineligibility under 209.470–1(a)(1), departments and agencies shall make no further payments under existing contracts with the institutions, and shall initiate termination action.

[61 FR 25408, May 21, 1996]

209.470–3 Contract clause.

Use the clause at 252.209–7005, Military Recruiting on Campus, in all solicitations and contracts with institutions of higher education.

[60 FR 13074, Mar. 10, 1995, as amended at 60 FR 51693, Nov. 30, 1995]

PART 211—DESCRIBING AGENCY NEEDS

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211.002 Policy.
211.002–70 Contract clause.

Subpart 211.2—Using and Maintaining Requirements Documents

211.201 Identification and availability of specifications.
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Subpart 211.5—Liquidated Damages

211.504 Contract clauses.

Subpart 211.6—Priorities and Allocations

211.602 General.

AUTHORITY: 41 U.S.C. 421 and 48 CFR Chapter 1.

SOURCE: 60 FR 61594, Nov. 30, 1995, unless otherwise noted.

211.002 Policy

All systems acquisition programs in the DoD are subject to the acquisition streamlining policies and procedures in DoDI 5000.2, Defense Acquisition Management Policies and Procedures.

211.002–70 Contract clause.

Use the clause at 252.211–7000, Acquisition Streamlining, in all solicitations and contracts for systems acquisition programs.

Subpart 211.2—Using and Maintaining Requirements Documents

211.201 Identification and availability of specifications.

(a) The DoD index of data item descriptions is DoD 5010.12–L, Acquisition Management Systems and Data Requirements Control List (AMSDL).

(b) Also, furnish data item descriptions which are not listed in the AMSDL, except when it is not feasible, e.g., documents are bulky or only a limited number of copies are available at the contracting activity.

(d) The AMSDL, all unclassified specifications and standards listed in the DODISS, and data item descriptions listed in the AMSDL may also be purchased from the Standardization Documents Desk, Building 4D, 700 Robbins Avenue, Philadelphia, PA 19111–5094. Include with the letter or DD Form 1425—

(i) The requester's customer number; and

(ii) Complete return mailing address, including any ''mark for'' instructions.

211.204 Solicitation provisions and contract clauses.

(c) When contract performance requires use of specifications and standards which are not listed in the DODISS and data item descriptions which are not listed in the AMSDL, use provisions, as appropriate, substantially the same as those at 252.211–7001, Availability of Specifications and Standards Not Listed in DODISS, Data Item Descriptions Not Listed in DoD 5010.12–L, and Plans, Drawings, and Other Pertinent Documents, and 252.211–7002, Availability for Examination of Specifications, Standards, Plans, Drawings, Data Item Descriptions, and Other Pertinent Documents.

211.270 Brand name or equal purchase descriptions.

211.270–1 Policy.

When a ''brand name or equal'' purchase description is used—

(a) The purchase description—

(1) Should include a complete common generic identification of the item.

(2) Should reference all known acceptable brand name products, to include—

(i) Name of manufacturer, producer, or distributor of each brand name product referenced (and address if not well known); and

(ii) Model, make, or catalog number for each, and identity of the commercial catalog in which it appears.

(3) May, if necessary to adequately describe an item, use a commercial catalog description or an extract from the catalog. Ensure that a copy of each catalog referenced (except parts catalogs) is available at the contracting office for review by offerors.

(4) Should give prospective offerors the opportunity to offer products other than those specifically referenced by brand name, as long as they meet the needs of the Government in essentially the same manner as the brand name product.

(5) Must identify those salient physical, functional, or other characteristics which are essential to the needs of the Government.

(b) The solicitation—

(1) Shall be at or below the simplified acquisition threshold in FAR part 13.

(2) May require bid samples for ''or equal'' offers, but not for ''brand name'' offers.

(3) Must provide for full consideration and evaluation of ''or equal'' offers against the salient characteristic specified in the purchase description. Do not reject offers for minor differences in design, construction, or features which do not affect the suitability of the product for its intended use.

(4) Must include the following immediately after the item description—Offering:

Manufacturer's Name_____ Brand_____ Model or Part No._____

(c) The contract shall—

(1) Not exceed the simplified acquisition threshold in FAR part 13.

(2) Identify, or incorporate by reference an identification of the specific products the contractor is to furnish. Include any brand name, make or model number, descriptive material, and any modifications of brand name products specified in the offer.

211.270–2 Solicitation provision.

(a) When a brand name or equal purchase description is included in a solicitation at or below the simplified acquisition threshold in FAR part 13, use the provision at 252.211–7003, Brand Name or Equal.

(b) When component parts of an end item are described by brand name or equal purchase descriptions and application of the provision at 252.211–7003 to some or all of the components is impracticable, either do not use the provision or limit its application to specified components.

211.271 Elimination of use of class I ozone-depleting substances.

(a) *Contracts.* No DoD contract may include a specification or standard that requires the use of a class I ozone-depleting substance or that can be met only through the use of such a substance unless the inclusion of the specification or standard is specifically authorized at a level no lower than a general or flag officer or member of the Senior Executive Service of the requiring activity in accordance with Section 326, Public Law 102–484 (10 U.S.C. 2301 (repealed) note).

(b) *Modifications.* (1) Contracts awarded before June 1, 1993, with a value in excess of $10 million, that are modified or extended (including option exercise) and, as a result of the modification or extension will expire more than one year after the effective date of the modification or extension, must be evaluated in accordance with agency procedures for the elimination of ozone-depleting substances.

(i) The evaluation must be carried out within 60 days after the first modification or extension.

(ii) No further modification or extension may be made to the contract until the evaluation is complete.

(2) If, as a result of this evaluation, it is determined that an economically feasible substitute substance or alternative technology is available, the contracting officer shall modify the contract to require the use of the substitute substance or alternative technology.

(3) If a substitute substance or alternative technology is not available, a written determination shall be made to that effect at a level no lower than a general or flag officer or member of the Senior Executive Service of the requiring activity.

211.272 Alternate preservation, packaging, and packing.

Use the provision at 252.211–7004, Alternate Preservation, Packaging, and Packing, in solicitations which include military preservation, packaging, or packing specifications when it is feasible to evaluate and award using commercial or industrial preservation, packaging, or packing.

211.273 Substitutions for military or Federal specifications and standards.

211.273–1 Definition.

SPI process, as used in this section, is defined in the clause at 252.211–7005, Substitutions for Military or Federal Specifications and Standards.

[62 FR 44224, Aug. 20, 1997]

211.273–2 Policy.

(a) Under the Single Process Initiative (SPI), DoD accepts SPI processes in lieu of specific military or Federal specifications or standards that specify a management or manufacturing process.

(b) DoD acceptance of an SPI process follows the decision of a Management Council, which includes representatives from the Defense Contract Management Command, the Defense Contract Audit Agency, and the military departments.

(c) In procurements of previously developed items, SPI processes that previously were accepted by the Management Council shall be considered valid replacements for military or Federal specifications or standards, absent a specific determination to the contrary (see 211.273–3(c)).

[62 FR 44224, Aug. 20, 1997]

211.273–3 Procedures.

(a) Solicitations for previously developed items shall encourage offerors to identify SPI processes for use in lieu of military or Federal specifications and standards cited in the solicitation. The solicitation shall require an offeror proposing to use an SPI process to include, in its response to the solicitation, documentation of the Government acceptance of the process.

(b) Contracting officers shall ensure that—

(1) Concurrence of the requiring activity has been or will be obtained for any proposed substitutions prior to contract award; and

(2) Any necessary additional information regarding the SPI process identified in the proposal is obtained from the cognizant administrative contracting officer.

(c) Any determination that an SPI process is not acceptable for a specific procurement shall be made at the head of the contracting activity or program executive officer level. This authority may not be delegated.

[62 FR 44224, Aug. 20, 1997]

211.273–4 Contract clause.

Use the clause at 252.211–7005, Substitutions for Military or Federal Specifications and Standards, in solicitations and contracts exceeding the micro-purchase threshold, when procuring previously developed items.

[62 FR 44224, Aug. 20, 1997]

Subpart 211.5—Liquidated Damages

211.504 Contract clauses.

(b) Use the clause at FAR 52.211–12, Liquidated Damages—Construction, in all construction contracts exceeding $500,000, except cost-plus-fixed-fee contracts or contracts where the contractor cannot control the pace of the work. Use of the clause in contracts of $500,000 or less is optional.

Subpart 211.6—Priorities and Allocations

211.602 General.

DoD implementation of the Defense Priorities and Allocations System is in DoDI 4400.1, Priorities and Allocations—Delegation of DO and DX Priorities and Allocations Authorities, Rescheduling of Deliveries and Continuance of Related Manuals.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

Subpart 212.2—Special Requirements for the Acquisition of Commercial Items

Sec.
212.211 Technical data.

Subpart 212.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.
212.302 Tailoring of provisions and clauses for the acquisition of commercial items.

Subpart 212.5—Applicability of Certain Laws to the Acquisition of Commercial Items

212.503 Applicability of certain laws to Executive Agency contracts for the acquisition of commercial items.
212.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

AUTHORITY: 41 U.S.C. 421 and 48 CFR Chapter 1.

SOURCE: 60 FR 61595, Nov. 30, 1995, unless otherwise noted.

Subpart 212.2—Special Requirements for the Acquisition of Commercial Items

212.211 Technical data.

The DoD policy for acquiring technical data for commercial items is at 227.7102.

Subpart 212.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f)(i) Use one of the following provisions as prescribed in part 225:

(A) 252.225–7000, Buy American Act—Balance of Payments Program Certificate.

(B) 252.225–7006, Buy American Act—Trade Agreements—Balance of Payments Program Certificate.

(C) 252.225–7035, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate.

(ii) Use the provision at 252.212–7000, Offeror Representations and Certifications—Commercial Items, in all solicitations for commercial items exceeding the simplified acquisition threshold. If an exception to 10 U.S.C. 2410i applies to a solicitation exceeding the simplified acquisition threshold (see 225.770–3), indicate on an addendum that ''The certification in paragraph (b) of the provision at 252.225–7000 does not apply to this solicitation.''

(iii) Use the clause at 252.212–7001, Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items, in all solicitations and contracts for commercial items, completing paragraph (b), as appropriate.

[60 FR 61595, Nov. 30, 1995, as amended at 61 FR 50452, Sept. 26, 1996; 62 FR 34122, June 24, 1997]

212.302 Tailoring of provisions and clauses for the acquisition of commercial items.

(c) *Tailoring inconsistent with customary commercial practice.*

The head of the contracting activity is the approval authority within the DoD for waivers under FAR 12.302(c).

Subpart 212.5—Applicability of Certain Laws to the Acquisition of Commercial Items

212.503 Applicability of certain laws to Executive Agency contracts for the acquisition of commercial items.

(a) The following laws are not applicable to contracts for the acquisition of commercial items:

(i) Section 806, Public Law 102–190 (10 U.S.C. 2301 (repealed) note), Payment Protections for Subcontractors and Suppliers.

(ii) 10 U.S.C. 2306(b), Prohibition on Contingent Fees.

(iii) 10 U.S.C. 2324, Allowable Costs Under Defense Contracts.

(iv) 10 U.S.C. 2384(b), Requirement to Identify Suppliers.

(v) 10 U.S.C. 2397(a)(1), Reports by Employees or Former Employees of Defense Contractors.

(vi) 10 U.S.C. 2397b(f), Limits on Employment for Former DoD Officials.

(vii) 10 U.S.C. 2397c, Defense Contractor Requirements Concerning Former DoD Officials.

(viii) 10 U.S.C. 2408(a), Prohibition on Persons Convicted of Defense Related Felonies.

(ix) 10 U.S.C. 2410b, Contractor Inventory Accounting System Standards (see 252.242–7004).

(x) 107 Stat 1720 (Section 843(a), Public Law 103–160), Reporting Requirement Regarding Dealings with Terrorist Countries.

(xi) Domestic Content Restrictions in the National Defense Appropriations Acts for Fiscal Years 1996 and Subsequent Years.

(c) The applicability of the following laws has been modified in regard to contracts for the acquisition of commercial items:

(i) 10 U.S.C. 2402, Prohibition on Limiting Subcontractor Direct Sales to the United States (see FAR 3.503 and 52.203–6).

(ii) 10 U.S.C. 2306a, Truth in Negotiations Act (see FAR 15.804).

212.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

(a) The following laws are not applicable to subcontracts at any tier for the acquisition of commercial items or commercial components:

(i) [Reserved]

(ii) Section 806, Public Law 102–190 (10 U.S.C. 2301 (repealed) note), Payment Protections for Subcontractors and Suppliers.

(iii) 10 U.S.C. 2306(b) Prohibition on Contingent Fees.

(iv) 10 U.S.C. 2313(c), Examination of Records of a Contractor.

(v) 10 U.S.C. 2320, Rights in Technical Data.

(vi) 10 U.S.C. 2321, Validation of Proprietary Data Restrictions.

(vii) 10 U.S.C. 2324, Allowable Costs Under Defense Contracts.

(viii) 10 U.S.C. 2327, Reporting Requirement Regarding Dealings with Terrorist Countries.

(ix) 10 U.S.C. 2384(b), Requirement to Identify Suppliers.

(x) 10 U.S.C. 2391 note, Notification of Substantial Impact on Employment.

(xi) 10 U.S.C. 2393, Prohibition Against Doing Business with Certain Offerors or Contractors.

(xii) 10 U.S.C. 2397(a)(1), Reports by Employees or Former Employees of Defense Contractors.

(xiii) 10 U.S.C. 2397b(f), Limits on Employment for Former DoD Officials.

(xiv) 10 U.S.C. 2397c, Defense Contractor Requirements Concerning Former DoD Officials.

(xv) 10 U.S.C. 2408(a) Prohibition on Persons Convicted of Defense Related Felonies.

(xvi) 10 U.S.C. 2410b, Contractor Inventory Accounting System Standards.

(xvii) 10 U.S.C. 2501 note, Notification of Proposed Program Termination.

(xviii) 10 U.S.C. 2534, Miscellaneous Limitations on the Procurement of Goods Other Than United States Goods.

(xix)–(xxi) [Reserved]

(xxii) Effective May 1, 1996: 10 U.S.C. 2631, Transportation of Supplies by Sea.

(xxiii) 19 U.S.C. 2512, Trade Agreements Act.

(xxiv) 41 U.S.C. 10, Buy American Act.

(xxv) 10 U.S.C. 2327 (Section 843(a), Public Law 103–160), Reporting Requirement Regarding Dealings with Terrorist Countries.

(xxvi) Domestic Content Restrictions in the National Defense Appropriations Acts for Fiscal Years 1996 and Subsequent Years.

(b) Certain requirements of the following laws have been eliminated for subcontracts at any tier for the acquisition of commercial items or commercial components:

(i) 10 U.S.C. 2393(d), Subcontractor Reports Under Prohibition Against Doing Business with Certain Offerors (see FAR 52.209–6).

(ii) 10 U.S.C. 2402, Prohibition on Limiting Subcontractor Direct Sales to the United States (see FAR 3.503 and 52.203–6).

[60 FR 61595, Nov. 30, 1995, as amended at 61 FR 58488, Nov. 15, 1996; 62 FR 5780, Feb. 7, 1997]

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

Sec.
213.000 Scope of part.

Subpart 213.1—General

213.101 Definitions.

Subpart 213.2—Blanket Purchase Agreements

213.203 Establishment of Blanket Purchase Agreements.
213.203–1 General.
213.203–2 Clauses.
213.204 Purchase under Blanket Purchase Agreements.

Subpart 213.3—Fast Payment Procedure

213.302 Conditions for use.

Subpart 213.4—Imprest Fund

213.401 General.
213.402 Agency responsibilities.
213.403 Conditions for use.

Subpart 213.5—Purchase Orders

213.503 Obtaining contractor acceptance and modifying purchase orders.
213.504 Termination or cancellation of purchase orders.
213.505 Purchase order and related forms.
213.505–1 Optional Form (OF) 347, Order for Supplies or Services, and Optional Form 348, Order for Supplies or Services Schedule-Continuation.
213.505–3 Standard Form 44, Purchase Order-Invoice-Voucher.
213.507 Provisions and clauses.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36324, July 31, 1991, unless otherwise noted.

213.000 Scope of part.

This part also implements 10 U.S.C. 2302(7) which increases the simplified acquisition threshold to $200,000 for any contract to be awarded and performed outside the United States in support of a contingency operation as defined in 10 U.S.C. 101(a)(13).

[59 FR 50851, Oct. 6, 1994, as amended at 61 FR 7742, Feb. 29. 1996]

Subpart 213.1—General

213.101 Definitions.

Contingency operation is defined in 10 U.S.C. 101(a)(13) as a military operation that—

(1) Is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(2) Results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12406 of Title 10, chapter 15 of Title 10, or any other provision of law during a war or during a national emergency declared by the President or Congress.

[59 FR 50851, Oct. 6, 1994, as amended at 61 FR 7742, Feb. 29, 1996]

Subpart 213.2—Blanket Purchase Agreements

213.203 Establishment of Blanket Purchase Agreements.

213.203–1 General.

(i) Prepare and issue blanket purchase agreements (BPAs) on DD Form 1155, Order for Supplies or Services.

213.203–2 Clauses.

(a) The clauses prescribed at 213.507 for purchase orders also apply to BPAs.

213.204 Purchase under Blanket Purchase Agreements.

(b) Individual purchases for subsistence may be made at any dollar value; however, the contracting officer shall satisfy the competition requirements

of FAR part 6 for any action not using simplified acquisition procedures.

[56 FR 36324, July 31, 1991, as amended at 61 FR 7742, Feb. 29, 1996]

Subpart 213.3—Fast Payment Procedure

§ 213.302 Conditions for use.

(a) Individual orders may exceed $25,000 for—

(i) Brand name commissary resale subsistence; and

(ii) Medical supplies for direct shipment overseas.

Subpart 213.4—Imprest Fund

213.401 General.

See DoDD 7360.10, Disbursing Policies, and chapter 32 of the DoD Accounting Manual, DoD 7220.9–M.

[56 FR 36324, July 31, 1991. Redesignated at 61 FR 7742, Feb. 29, 1996]

213.402 Agency responsibilities.

(c) Installation commanders and commanders of other activities with contracting authority are responsible for approving the establishment of imprest funds.

[56 FR 36324, July 31, 1991. Redesignated at 61 FR 7742, Feb. 29, 1996]

213.403 Conditions for use.

(a) Overseas transactions in support of a contingency operation as defined in 10 U.S.C. 101(a)(13) may use imprest funds up to $2,500.

(c)(i) Additional conditions for use include—

(A) Availability for delivery within 60 days; and

(B) No requirement for detailed technical specifications or technical inspections.

(ii) When imprest funds are used for simplified acquisitions, the funds may also be used to pay charges for local delivery, parcel post, c.o.d. charges, and line haul or inter-city transportation charges when the supplier is to arrange for delivery.

[56 FR 36324, July 31, 1991, as amended at 59 FR 50851, Oct. 6, 1994. Redesignated and amended at 61 FR 7742, Feb. 29, 1996]

Subpart 213.5—Purchase Orders

213.503 Obtaining contractor acceptance and modifying purchase orders.

(a) Require written acceptance of purchase orders for classified acquisitions.

(b) Use Standard Form 30, Amendment of Solicitation/Modification of Contract, to modify purchase orders.

(d)(i) Unilateral modifications (see FAR 43.103) may also be used for—

(A) No cost amended shipping instructions (ASI) if—

(*1*) The ASI modifies a unilateral purchase order, and

(*2*) The contractor agrees verbally or in writing.

(B) Any change made before work begins if—

(*1*) The change is within the scope of the original order;

(*2*) The contractor agrees;

(*3*) The modification references the contractor's verbal or written agreement; and

(*4*) Block 13D of the Standard Form 30 is annotated to reflect the authority for issuance of the modification.

(ii) A supplemental agreement converts a unilateral purchase order to a bilateral agreement. If not previously included in the purchase order, incorporate the clauses prescribed in 213.507(a)(ii) in the Standard Form 30, Amendment of Solicitation/Modification of Contract, and obtain the contractor's acceptance by signature on the Standard Form 30.

213.504 Termination or cancellation of purchase orders.

(b) Use Standard Form 30 to cancel a unilateral purchase order.

213.505 Purchase order and related forms.

213.505–1 Optional Form (OF) 347, Order for Supplies or Services, and Optional Form 348, Order for Supplies or Services Schedule-Continuation.

Departments and agencies shall not use Optional Forms 347, Order for Supplies or Services, and 348, Order for Supplies or Services Schedule-Continuation.

(b)(i) Use DD Form 1155, Orders for Supplies or Services, (see 253.213(e)), for purchases made using the simplified acquisition procedures of FAR part 13. The DD Form 1155 serves as—

(A) A purchase order or a blanket purchase agreement, when used with the clauses prescribed at 213.507(a);

(B) A delivery order under a Government contract or from Government agencies outside the DoD;

(C) A receiving and inspection report;

(D) A property voucher;

(E) A document for acceptance by the supplier; and

(F) A public voucher, when used as—

(*1*) A delivery order;

(*2*) The basis for payment of an invoice against blanket purchase agreements or basic ordering agreements when a firm price has been established; or

(*3*) A purchase order for acquisitions using simplified acquisition procedures.

(ii) The DD Form 1155 is also authorized for use for—

(A) Classified acquisitions when the purchase is made within the United States, its possessions, and Puerto Rico. Attach the DD Form 254, Contract Security Classification Specification, to the purchase order.

(B) Orders under departmental contracts or from Government agencies outside the DoD (see FAR subparts 8.4, 8.6, 8.7, and 16.5).

[56 FR 36324, July 31, 1991. Redesignated and amended at 61 FR 7742, Feb. 29, 1996; 61 FR 9532, Mar. 8, 1996]

213.505–3 Standard Form 44, Purchase Order-Invoice-Voucher.

(b)(1) The micro-purchase limitation applies to all purchases except that purchases up to the simplified acquisition threshold may be made for—

(A) Aviation fuel and oil;

(B) Overseas transactions by contracting officers in support of a contingency operation as defined in 10 U.S.C. 101(a)(13); and

(C) Transactions in support of intelligence and other specialized activities addressed by Part 2.7 of Executive Order 12333.

[59 FR 50851, Oct. 6, 1994, as amended at 61 FR 7742, Feb. 29, 1996; 61 FR 18195, Apr. 24, 1996]

213.507 Provisions and clauses.

(a) Use the clauses in paragraphs (a)(i) through (iii) of this section, as applicable, in all purchase orders and blanket purchase agreements. The clauses listed in the following paragraphs (i) and (ii) may be incorporated by reference, except for FAR 52.252–2, Clauses Incorporated by Reference. Any other clauses included in the purchase order shall be incorporated by reference or in full text as required by the matrix in FAR 52.3.

(i) Unilateral purchase orders—

(A) FAR 52.252–2, Clauses Incorporated by Reference (required only if other clauses are incorporated by reference);

(B) FAR 52.203–3, Gratuities;

(C) FAR 52.211–16, Variation in Quantity;

(D) FAR 52.222–3, Convict Labor (unless the order will be subject to the Walsh-Healey Public Contracts Act (see FAR subpart 22.6));

(E) FAR 52.222–26, Equal Opportunity (unless exempt under FAR 22.807);

(F) FAR 52.225–3, Buy American Act-Supplies;

(G) FAR 52.232,–1, Payments;

(H) FAR 52.232–25, Prompt Payment;

(I) FAR 52.232–28, Electronic Funds Transfer Payment Methods;

(J) FAR 52.233–1, Disputes;

(K) FAR 52.246–1, Contractor Inspection Requirements (except when an alternate level of quality assurance is necessary (see FAR 46.203 and 46.204)); and

(L) FAR 52.246–16, Responsibility for Supplies.

(ii) Bilateral purchase orders—

(A) The clauses in paragraph (a)(i) of this section;

(B) FAR 52.204–2, Security Requirements (if the acquisition is classified);

(C) FAR 52.243–1, Changes—Fixed Price (with appropriate alternate as necessary);

(D) 252.243–7001, Pricing of Contract Modifications;

(E) FAR 52.249–1, 52.249–4, or 52.249–5, Termination for Convenience of the Government; and

(F) FAR 52.249–8, 52.249–9, or 52.249–10, Default.

(iii) Any other clauses required by the prescription for their use.

[56 FR 36324, July 31, 1991, as amended at 61 FR 7742, Feb. 29, 1996]

PART 214—SEALED BIDDING

Sec.

Subpart 214.2—Solicitation of Bids

214.202 General rules for solicitation of bids.
214.202–5 Descriptive literature.

Subpart 214.4—Opening of Bids and Award of Contract

214.404 Rejection of bids.,

214–404–1 Cancellation of invitations after opening.

214.407 Mistakes in bids.

214.407–3 Other mistakes disclosed before award.

Subpart 214.5—Two-Step Sealed Bidding

214.503 Procedures.
214.503–1 Step one.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36326, July 31, 1991, unless otherwise noted.

Subpart 214.2—Solicitation of Bids

214.202 General rules for solicitation of bids.

214.202–5 Descriptive literature.

(d) *Requirements of invitation for bids.* When brand name or equal purchase descriptions are used, use of the provision at 252.210–7000, Brand Name or Equal, satisfies this requirement.

Subpart 214.4—Opening of Bids and Award of Contract

214.404 Rejection of bids.

214.404–1 Cancellation of invitations after opening.

The contracting officer shall make the written determinations required by FAR 14.404–1 (c) and (e).

214.407 Mistakes in bids.

214.407–3 Other mistakes disclosed before award.

(e) Authority for making a determination under FAR 14.407–3(a), (b) and (d) is delegated for the defense agencies, without power of redelegation, as follows:

(i) Defense Advanced Research Projects Agency: General Counsel, DARPA.

(ii) Defense Information Systems Agency: General Counsel, DISA.

(iii) Defense Intelligence Agency: Principal Assistant for Acquisition.

(iv) Defense Logistics Agency:

(A) General Counsel, DLA; and

(B) Associate General Counsel, DLA.

(v) National Imagery and Mapping Agency: General Counsel, NIMA.

(vi) Defense Special Weapons Agency: General Counsel, DSWA.

(vii) National Security Agency: Director of Procurement, NSA.

(viii) On-Site Inspection Agency: General Counsel, OSIA.

(ix) Ballistic Missile Defense Organization: General Counsel, BMDO.

(h) Send a signed copy of the document authorizing correction of the bid to the appropriate finance center with its copy of the contract.

[57 FR 42629, Sept. 15, 1992, as amended at 59 FR 27669, May 27, 1994; 61 FR 50452, Sept. 26, 1996. Redesignated and amended at 62 FR 34122, June 24, 1997]

Subpart 214.5—Two-Step Sealed Bidding

214.503 Procedures.

214.503–1 Step one.

(a) Requests for technical proposals may be in the form of a letter.

[56 FR 36326, July 31, 1991, as amended at 57 FR 53599, Nov. 12, 1992]

PART 215—CONTRACTING BY NEGOTIATION

Sec.

Subpart 215.4—Solicitation and Receipt of Proposals and Quotations

215.401 Applicability.
215.406–2 Part I—The Schedule.

215.414 Forms.

Subpart 215.6—Source Selection

215.605 Evaluation factors and subfactors.
215.607 Disclosure of mistakes before award.
215.608 Proposal evaluation.
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Subpart 215.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

215.1001 Notifications to unsuccessful offerors.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36326, July 31, 1991, unless otherwise noted.

Subpart 215.4—Solicitation and Receipt of Proposals and Quotations

215.401 Applicability.

See 225.872 for additional guidance on procedures for purchasing from qualifying countries.

215.406–2 Part I—The Schedule.

(g) When a contract contains both fixed-priced and cost-reimbursement line items or subline items, the contracting officer shall provide, in Section B, Supplies or Services and Prices/Costs, an identification of contract type specified for each contract line item or subline item to facilitate appropriate payment.

[60 FR 34470, July 3, 1995; 60 FR 43191, Aug. 18, 1995]

215.414 Forms.

This does not preclude use of letter RFPs and RFQs, provided their use complies with other requirements of the FAR and this regulation.

Subpart 215.6—Source Selection

215.605 Evaluation factors and subfactors.

(b)(2)(A) In acquisitions which require use of the clause at FAR 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, the extent of participation of small and small disadvantaged business in performance of the contact shall be addressed in source selection.

(*1*) For acquisitions other than those based only on cost or price competition, the contracting officer shall evaluate the extent to which offerors identify and commit to small business and to small disadvantaged business,

historically black college and university, or minority institution performance of the contract, whether as a joint venture, teaming arrangement, or subcontractor.

(*2*) Criteria for evaluation may include—

(*i*) The extent which such firms are specifically identified in proposals;

(*ii*) The extent of commitment to use such firms (for example, enforceable commitments are to be weighted more heavily than non-enforceable ones);

(*iii*) The complexity and variety of the work small firms are to perform;

(*iv*) The realism of the proposal;

(*v*) When not otherwise required by 215.608(a)(2), past performance of the offerors in complying with requirements of the clauses at FAR 52.219–8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns, and 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan; and

(*vi*) The extent of participation of such firms in terms of the value of the total acquisition.

(*3*) Proposals addressing the extent of small and small disadvantaged business performance may be separate from subcontracting plans submitted pursuant to the clause at FAR 52.219–9 and should be structured to allow for consideration of offers from small businesses.

(*4*) When an evaluation includes the criterion in paragraph (b)(2)(A)(*2*)(*i*) of this section, the small, small disadvantaged, or women-owned small businesses considered in the evaluation shall be listed in any subcontracting plan submitted pursuant to FAR 52.219–9 to facilitate compliance with 252.219–7003(g).

(B) The costs or savings related to contract administration and audit may be considered when the offeror's past performance or performance risk is likely to result in significant costs or savings.

(c) In competitive acquisitions of services—

(i) Evaluation and award should be based, to the maximum extent practicable, on best overall value to the Government in terms of quality and other factors.

(ii) The weighting of costs must be commensurate with the nature of the services being acquired.

(A) It may be appropriate to award to an offeror, based on technical and quality considerations, at other than the lowest price when—

(*1*) The effort being contracted for departs from clearly defined efforts; or

(*2*) Highly skilled personnel are required.

(B) It may be appropriate to award to the technically acceptable offeror with the lowest price when—

(*1*) Services being acquired are of a routine or simple nature;

(*2*) Highly skilled personnel are not required; or

(*3*) The product to be delivered is clearly defined at the outset of the acquisition.

[56 FR 36326, July 31, 1991, as amended at 56 FR 67213, Dec. 30, 1991; 57 FR 14992, Apr. 23, 1992; 59 FR 27669, May 27, 1994; 61 FR 18687, Apr. 29, 1996; 61 FR 50452, Sept. 26, 1996]

215.607 Disclosure of mistakes before award.

(c)(3) The designee is the head of the contracting activity, who may redelegate this authority to the chief of the contracting office.

215.608 Proposal evaluation.

(a)(1) Contracting officers shall ensure that the use of uncompensated overtime in contracts to acquire services on the basis of the number of hours provided (see 237.170) will not degrade the level of technical expertise required to fulfill the Government's requirements. When acquiring such services, contracting officers shall conduct a risk assessment, and evaluate for award on that basis, any proposals received that reflect factors such as—

(i) Unrealistically low labor rates or other costs that may result in quality or service shortfalls; and

(ii) Unbalanced distribution of uncompensated overtime among skill levels and its use in key technical positions.

(2) When a past performance evaluation is required by FAR 15.605, and the solicitation includes the clause at FAR 52.219–8, Utilization of Small, Small Disadvantaged and Women-Owned

Small Business Concerns, the evaluation shall include the past performance of offerors in complying with requirements of that clause. When a past performance evaluation is required by FAR 15.605, and the solicitation includes the clause at FAR 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, the evaluation shall include the past performance of offerors in complying with requirements of that clause.

(b) Except for determinations based on violations or possible violations of section 27 of the Office of Federal Procurement Policy (OFPP) Act, and unless otherwise specified in department/agency regulations, the contracting officer shall make the written determination. Determinations based on violations or possible violations of Section 27 of the OFPP Act shall be made as specified in FAR 3.104.

[56 FR 36326, July 31, 1991, as amended at 56 FR 67213, Dec. 30, 1991; 61 FR 18687, Apr. 29, 1996; 62 FR 2612, Jan. 17, 1997]

215.611 Best and final offers.

(c)(i) Before requesting an additional (second or subsequent) best and final offer, the contracting officer shall obtain approval from—

(A) The source selection authority and the senior procurement executive (SPE) for competitive negotiated acquisitions under formal source selection (see FAR 15.612). The SPE may delegate this authority to a level no lower than the head of the contracting activity.

(B) The head of the contracting activity (HCA) for all other competitive negotiated acquisitions. The HCA may delegate this authority to the chief of the contracting office.

(ii) Each HCA shall establish a system for reporting and documenting additional requests for best and final offers. Systems shall include as a minimum—

(A) The total number of competitive negotiated acquisitions awarded;

(B) The number of those acquisitions for which an additional request for best and final offers was approved and issued; and

(C) The reasons for approving each additional request for best and final offers.

(iii) To ensure that additional requests for best and final offers are used only when necessary and unavoidable, HCAs shall—

(A) Periodically analyze data collected under paragraph (c)(ii) of this section;

(B) Take appropriate corrective action, e.g., training, revising approval levels; and

(C) Provide periodic summary reports to the SPE as specified in department/agency regulations.

215.613 Alternate source selection procedures.

215.613–70 Four-step source selection procedures.

(a) *General.* The four-step source selection procedure is designed for those situations where the Government wishes to focus on technical excellence. Proposals are evaluated, a competitive range established, and an apparent successful offeror selected without discussions of proposal deficiencies (a deficiency is defined as that part of an offeror's proposal which would not satisfy the Government's requirements). Negotiations are conducted only in the final step and only with the apparent successful offeror.

(b) *Applicability.* Four-step source selection procedures may be used for—

(1) Competitively negotiated research and development acquisitions with an estimated value of $2 million or more; or

(2) Other acquisitions as permitted by department/agency regulations, except those in paragraph (c) of this subsection.

(c) *Restrictions.* Four-step source selection procedures shall not be used for acquisitions which—

(1) Will require extensive discussion and negotiations;

(2) Use the authority of FAR 6.302–2;

(3) Are solely for personal or nonpersonal services;

(4) Are for architect-engineer services; or

(5) Have an estimated value of less than $2 million.

(d) *Presolicitation.* Establish early and open dialogue with prospective offerors

to ensure their understanding of the Government's needs, since the evaluation will be conducted with limited discussions and without disclosing deficiencies in offeror proposals. Ways of establishing this dialogue are—

(1) Presolicitation notices;

(2) Presolicitation conferences;

(3) Preproposal conferences;

(4) Solicitations for information or planning purposes; and

(5) Tailoring of specifications.

(e) *Solicitations.* Include the following special provisions in four-step source selection solicitations—

(1) Explanation of the four-step concept and procedures;

(2) Statement regarding the relative importance of technical/system performance criteria;

(3) Notification that the contracting officer may reject proposals with unrealistic technical, schedule, cost, or price commitments since unrealistic commitments reflect an inherent lack of technical competence or indicate a failure to comprehend the complexity and risks of the requirements;

(4) Schedule of planned source selection events, including specific dates for the sequential submission of separate technical and cost proposal.

(5) Requirement for the technical proposal to include—

(i) Identification, when appropriate, of trade-offs (with illustrative cost estimate impacts) among performance, production costs, operating and support costs, schedule and logistics support factors; and

(ii) Information showing that the goals for design to cost and operating and support costs (when used) will be achieved when the item enters production.

(6) Requirement for the cost proposal to include detailed cost information supporting the technical proposal and the cost factors in the evaluation criteria;

(7) Statement that both technical and cost discussions will be limited as described in paragraphs (f) and (g) of this subsection; and

(8) Notification that the contracting officer will only negotiate with the selected offeror, and that offerors' initial technical and cost proposals should be their best offer.

(f) *Step one—evaluation of technical proposals.* (1) The sequence of step one—

(i) Evaluate all technical proposals;

(ii) Conduct limited discussions with all offerors; and

(iii) Ask for any necessary clarifications and additional supporting data when necessary (normally, ask that this be submitted with the cost proposal).

(2) In conducting step one—

(i) Limit discussions to only what is necessary to ensure that both parties understand each other;

(ii) Do not tell offerors about deficiencies in their proposals; and

(iii) Provide written clarification to all offerors when it appears the Government's requirements have been misinterpreted.

(g) *Step two—evaluation of cost proposals.* (1) The sequence of step two—

(i) Request cost proposals;

(ii) Evaluate all cost proposals;

(iii) Establish the competitive range;

(iv) Eliminate those proposals outside the range and advise those offerors;

(v) Conduct limited discussions with remaining offerors; and

(vi) Eliminate proposals which cannot be made acceptable and advise the offerors.

(2) In conducting step two—

(i) Limit discussions to—

(A) Clarifying inconsistencies or correcting mathematical errors;

(B) Correlating cost elements with technical effort in order to assess cost realism; and

(C) Ensuring a complete understanding of the Government's requirements, the offeror's offer, and other contract terms;

(ii) Do not tell an offeror that any of its cost elements are either too high or too low; and

(iii) Follow the guidelines in paragraph (f) of this subsection if further discussions of technical proposals or clarifications are required.

(h) *Step three—common cut-off and selection of an offeror for final contract negotiations.* (1) The sequence of step three—

(i) Notify offerors of the common cut-off date for receipt of best and final offers (technical and cost);

(ii) Evaluate the offers;

(iii) Select the best offeror (see paragraph (h)(2)(iv) of this subsection for multiple sources);

(iv) Tell the selected source that the decision is conditional based on negotiation of a definitive contract within the time period prescribed by the source selection authority; and

(v) Advise the other offerors of the source selected.

(2) In conducting step three—

(i) Remind offerors, when notifying them of the common cut-off date, that any changes incorporated in the final proposal must be fully documented;

(ii) Do not accept lump sum reductions in final cost proposals without supporting data;

(iii) Do not request additional best and final offers without the approval required by 215.611(c); and

(iv) Do not select two or more offerors, rather than a single source, for final contract negotiations, unless the HCA makes a written determination that final selection of a single source should not be made until the prospective contracts have been tentatively negotiated.

(i) *Step four—final negotiations and contract award.* (1) The sequence of step four (single selectee)—

(i) Negotiate the final contract price, terms, and conditions; and

(ii) Award the contract.

(2) The sequence of step four (multiple selectees)—

(i) Negotiate tentative final contract terms and conditions;

(ii) Select the best source; and

(iii) Award.

(3) In conducting step four—

(i) Complete negotiations and award the contract within the time prescribed by the source selection authority;

(ii) Terminate negotiations and make a new source selection decision if the condition in paragraph (i)(3)(i) cannot be met;

(iii) Do not permit changes in the Government's requirements or the offeror's proposal which would affect the source selection decision; and

(iv) Follow the procedures in FAR 15.606 if changes in the Government's requirements are necessary.

Subpart 215.7—Make-or-Buy Programs

215.704 Items and work included.

The minimum dollar amount is $1 million.

Subpart 215.8—Price Negotiation

215.804 Cost or pricing data and information other than cost or pricing data.

215.804–1 Prohibition on obtaining cost or pricing data.

(b) *Standards for exceptions from cost or pricing data requirements*—(1) *Adequate price competition.* (A) An example of a price ''based on'' adequate price competition is exercise of a priced option in a contract where adequate price competition existed, if the contracting officer has determined that the option price is reasonable in accordance with FAR 17.207(d);

(B) Dual or multiple source programs.

(1) In dual or multiple source programs, the determination of adequate price competition must be made on a case-by-case basis. Contracting officers must exercise deliberation and thorough review in making the determination. Even when adequate price competition exists, in certain cases it may be appropriate to obtain additional information to assist in price analysis.

(2) Adequate price competition normally exists when—

(i) Prices are solicited across a full range of step quantities, normally including a 0–100 percent split, from at least two offerors that are individually capable of producing the full quantity; and

(ii) The reasonableness of all prices awarded is clearly established on the basis of price analysis (see FAR 15.805–2).

(4) *Exceptional cases.*

(A) The DoD has exempted the Canadian Commercial Corporation and its subcontractors from submission and certification of cost or pricing data on all acquisitions.

(B) The DoD has waived certain cost or pricing data requirements for nonprofit organizations (including educational institutions) on cost-reimbursement-no-fee contracts. The contracting officer shall require—

(1) Submission of information other than cost or pricing data to the extent necessary to determine price reasonableness and cost realism; and

(2) Cost or pricing data from subcontractors that are not nonprofit organizations.

[62 FR 40472, July 29, 1997]

215.804–6 Procedural requirements.

(b)(1)(A) When the solicitation requires contractor compliance with the Contractor Cost Data Reporting (CCDR) System (Army—AMCP 715–8, Navy—NAV PUB P–5241, and Air Force—AFMCP 800–15), require the contractor to submit DD Forms 1921 or 1921–1 with its SF 1411.

(B) Contracting offices may develop contract pricing proposal supporting schedules for use by offerors in providing supporting data for the SF 1411. Schedules should only ask for data that are necessary and reasonable based on industry, company, or commodity practices.

[56 FR 36326, July 31, 1991, as amended at 59 FR 27669, May 27, 1994; 62 FR 40472, July 29, 1997]

215.804–7 Defective cost or pricing data.

(b)(2) Unless there is clear evidence to the contrary, the contracting officer may presume the defective data were relied on and resulted in a contract price increase equal to the amount of the defect plus related overhead and profit or fee. The contracting officer is not expected to reconstruct the negotiation by speculating as to what would have been the mental attitudes of the negotiating parties if the nondefective data had been known.

215.804–8 Contract clauses.

If the solicitation or contract includes one of the clauses at FAR 52.215–23, FAR 52.215–24, or FAR 52.215–25, also use the clause at 252.215–7000, Pricing Adjustments.

[60 FR 61596, Nov. 30, 1995]

215.805 Proposal analysis.

215.805–5 Field pricing support.

(a)(1)(A) Contracting officers shall request field pricing reports for—

(1) Fixed-price proposals exceeding the cost or pricing data threshold at FAR 15.804–2(a)(1);

(2) Cost-type proposals exceeding the cost or pricing data threshold at FAR 15.804–2(a) (1) from offerors with significant estimating system deficiencies (see 215.811–70(a)(3) and (c)(2)(i); or

(B) Contracting officers may, with adequate written justification, waive the requirement for these reports.

(2)(A) The contract administration office price/cost analyst supports the administrative contracting officer in preparing a complete and accurate field pricing report for the contracting officer. The analyst—

(*1*) In concert with the auditor and in consideration of the auditor's workload, establishes a deadline for the auditor's input, subject to adjustments when considered necessary;

(*2*) Identifies areas for special consideration;

(*3*) Arranges for exchanges of technical and audit information; and

(*4*) Must be fully responsive to a request for technical information from the auditor.

(B) The pricing report—

(*1*) Details the price/cost analyst's comprehensive review and evaluation of the proposal;

(*2*) Includes information specifically requested by the contracting officer; and

(*3*) Summarizes what was analyzed, how it was analyzed, and the conclusions reached.

(c)(i) In requesting field pricing support—

(A) Mark all requests ''FIELD PRICING REQUEST'' in bold letters on the mailing envelope;

(B) On urgent requests, provide facsimile numbers to facilitate return of the completed report; and

(C) Send an advance copy to the audit activity.

(ii) When the contracting officer knows in advance that field pricing support will be required, the contracting officer may request field pricing

support before the offeror submits a proposal.

(A) Give the administrative contracting officer (ACO) and auditor a copy of the solicitation;

(B) Tell them when to expect the proposal; and

(C) Tell the offeror to provide the ACO and auditor copies of the proposal.

(iii) Where audit reports are received on contracting actions that are subsequently cancelled or unsuccessful, notify the cognizant auditor in writing.

(iv) For spare parts or support equipment, identify all line items where the proposed price exceeds by 25 percent or more the lowest price the Government has paid within the most recent 12-month period. The field pricing report will include, as a minimum—

(A) A detailed analysis of each line item identified by the contracting officer in the request;

(B) A detailed analysis of those line items where a comparison of the item description and the proposed price indicates a potential for overpricing;

(C) An analysis of the significant high-dollar-value items. If there are no obvious high-dollar-value items, include an analysis of a random sample of items; and

(D) An analysis of a random sample of the remaining low-dollar value items. Sample size may be determined by subjective judgment, e.g., experience with the contractor and reliability of its estimating and accounting systems.

(v) For spare parts proposals that have been identified as Spares Acquisition Integrated with Production (SAIP) items (see DoD Instruction 4245.12, Spares Acquisition Integrated with Production (SAIP))—

(A) Include a copy of the data entitled ''Contractor's Procurement Schedule for SAIP'' (Data Item DI–V–7200), or equivalent, in the request so that the benefits of combining new and in process quantities can be assured (these data are delivered by the contractor on contracts that include SAIP requirements); or

(B) Require the contractor to include these data in its proposal.

(e)(6) The contract administration office price/cost analyst is responsible for providing a complete and accurate field pricing report. This includes quantifying technical findings; however, if the auditor requests a technical analysis, the auditor normally will incorporate the financial effect of the analysis in the audit report.

(7) The contracting officer shall, with the advice of the ACO and auditor, ensure that the contractor initiates necessary corrective action before contract award.

(8) The administrative contracting officer and auditor shall confer with the contractor during the course of the field pricing review to fully understand the basis for each item in the proposal and to remove any doubts as to the validity and accuracy of their conclusions and findings.

(g) The audit activity sends the original to the administrative contracting officer and a copy to the contracting officer.

[56 FR 36326, July 31, 1991, as amended at 62 FR 40472, July 29, 1997]

215.805–70 Cost realism analysis.

(a) In competitive acquisitions, even when adequate price competition exists, to ensure that proposed costs are consistent with the technical proposal, the contracting officer—

(1) Should perform a cost realism analysis when—

(i) A cost-reimbursement contract is anticipated;

(ii) The solicitation contains new requirements that may not be fully understood by competing contractors;

(iii) There are quality concerns; or

(iv) Past experience indicates that contractors proposed costs have resulted in quality or service shortfalls.

(2) May perform a cost realism analysis on other acquisitions.

(b) The contracting officer should determine what information other than cost or pricing data is necessary for the cost realism analysis during acquisition planning and development of the solicitation. Unless such information is already available from Government sources, the contracting officer will need to ask the offerors for it.

(1) Request only necessary data; and

(2) Do not request submission of cost or pricing data.

[56 FR 36326, July 31, 1991, as amended at 62 FR 40472, July 29, 1997]

215.806 Subcontract pricing considerations.

215.806–1 General.

Price redeterminable or fixed-price incentive contracts may include subcontracts placed on the same basis. When the contracting officer wants to reprice the prime contract even though the contractor has not yet established final prices for the subcontracts, the contracting officer may negotiate a firm contract price—

(1) If cost or pricing data on the subcontracts show the amounts to be reasonable and realistic; or

(2) If cost or pricing data on the subcontracts are too indefinite to determine whether the amounts are reasonable and realistic, but—

(i) Circumstances require prompt negotiation; and

(ii) A statement substantially as follows is included in the repricing modification of the prime contract:

As soon as the Contractor establishes firm prices for each subcontract listed below, the Contractor shall submit (in the format and with the level of detail specified by the Contracting Officer) to the Contracting Officer the subcontractor's cost incurred in performing the subcontract and the final subcontract price. The Contractor and Contracting Officer shall negotiate an equitable adjustment in the total amount paid or to be paid under this contract to reflect the final subcontract price.

(a)(1) Contractor and subcontractor proposals may reflect the selection of sources whose proposals offer the greatest value to the Government in terms of performance and other factors. If the selection is based on greatest value rather than lowest price, the analysis supporting subcontractor selection should include a discussion of the factors considered in the selection (see also FAR 15.605(c) and 215.605(c)). If the contractor's analysis is not adequate, return it for correction of deficiencies.

(d) The contracting officer shall make every effort to ensure that fees negotiated by contractors for cost-plus-fixed-fee subcontracts do not exceed the fee limitations in FAR 15.903(d).

[56 FR 36326, July 31, 1991, as amended at 60 FR 29497, June 5, 1995]

215.806–3 Field pricing reports.

(a)(i) If, in the opinion of the contracting officer or auditor, the review of a prime contractor's proposal requires further review of subcontractors' cost estimates at the subcontractors' plants (after due consideration of reviews performed by the prime contractor), these reviews should be fully coordinated with the administrative contracting officer (ACO) having cognizance of the prime contractor before being initiated. The ACO for the prime contractor will initiate the request to the ACO for the subcontractor, with an information copy to the auditor for the subcontractor. The ACO for the subcontractor sends the resulting field pricing report to the prime ACO with an information copy to the prime auditor. Requests for field pricing support on lower tier subcontractors are handled in a like manner.

(ii) Notify the appropriate contract administration activities when extensive, special, or expedited field pricing assistance will be needed to review and evaluate subcontractors' proposals under a major weapon system acquisition.

215.807 Prenegotiation objectives.

(a)(i) Also consider data resulting from application of work measurement systems in developing prenegotiation objectives.

(ii) Consider field pricing support personnel participation in planned prenegotiation and negotiation activities.

(b) Prenegotiation objectives, including objectives related to disposition of findings and recommendations contained in preaward and postaward contract audit and other advisory reports, shall be documented and reviewed in accordance with Departmental procedures.

[56 FR 36326, July 31, 1991, as amended at 59 FR 27669, May 27, 1994]

215.808 Price negotiation memorandum.

(a)(8) Include the principal factors related to the disposition of findings and recommendations contained in preaward and postaward contract audit and other advisory reports.

(10) The memorandum—

(A) Must document significant deviations from the prenegotiation profit objective;

(B) Should include the DD Form 1547, Record of Weighted Guidelines Application (see subpart 215.9), if used, with supporting rationale; and

(C) Must document the rationale for not using the weighted guidelines method when its use is required by 215.9.

215.809 Forward pricing rate agreements.

(e)(i) Use forward pricing rate agreement (FPRA) rates when such rates are available, unless waived on a case-by-case basis by the head of the contracting activity.

(ii) Advise the ACO of each case waived.

(iii) Contact the ACO for questions on FPRAs or recommended rates.

215.810 Should-cost review.

215.810–2 Program should-cost review.

(b) DoD contracting activities should consider performing a program should-cost review before award of a definitive major systems contract exceeding $100 million.

[61 FR 7742, Feb. 29, 1996]

215.810–3 Overhead should-cost review.

(a) Contact the DCMC/DLA Overhead Center, Fort Belvoir, VA 22060–6221, at (703) 767–3387, for questions on overhead should-cost analysis.

(b)(i) The Defense Contract Management Command/Defense Logistics Agency (DCMC/DLA), or the military department responsible for performing contract administration functions (e.g., Navy SUPSHIP), should consider, based on risk assessment, performing an overhead should-cost review of a contractor business unit (as defined in FAR 31.001) when all of the following conditions exist:

(A) Projected annual sales to DoD exceed $1 billion;

(B) Projected DoD versus total business exceeds 30 percent;

(C) Level of sole-source DoD contracts is high;

(D) Significant volume of proposal activity is anticipated;

(E) Production or development of a major weapon system or program is anticipated; and

(F) Contractor cost control/reduction initiatives appear inadequate.

(ii) The head of the contracting activity may request an overhead should-cost review for a business unit which does not meet the criteria in paragraph (b)(i) of this subsection.

(iii) Overhead should-cost reviews are labor intensive. These reviews generally involve participation by the contracting, contract administration, and contract audit elements. The extent of availability of military department, contract administration, and contract audit resources to support DCMC/DLA-led teams should be considered when determining whether a review will be conducted. Overhead should-cost reviews generally shall not be conducted at a contractor business segment more frequently than every three years.

[61 FR 7743, Feb. 29, 1996; 61 FR 18195, Apr. 24, 1996]

215.811 Estimating systems.

215.811–70 Disclosure, maintenance, and review requirements.

(a) *Definitions.* (1) *Adequate estimating system* means an estimating system that—

(i) Is established, maintained, reliable, and consistently applied; and

(ii) Produces verifiable, supportable, and documented cost estimates.

(2) *Contractor* means a business unit as defined in FAR 31.001.

(3) *Estimating system* is as defined in the clause at 252.215–7002 Cost Estimating System Requirements.

(4) *Significant estimating system deficiency* means a shortcoming in the estimating system which is likely to consistently result in proposal estimates for total cost or a major cost element(s) which do not provide an acceptable basis for negotiation of fair and reasonable prices.

(b) *Applicability.* (1) DoD policy is that all contractors have estimating systems that—

(i) Are adequate;

(ii) Consistently produce well supported proposals that are acceptable as

a basis for negotiation of fair and reasonable prices;

(iii) Are consistent with and integrated with the contractor's related management systems; and

(iv) Are subject to applicable financial control systems.

(2) A large business contractor is subject to estimating system disclosure, maintenance, and review requirements if—

(i) In its preceding fiscal year, the contractor received DoD prime contracts or subcontracts totaling $50 million or more for which cost or pricing data were required; or

(ii) In its preceding fiscal year, the contractor received DoD prime contracts or subcontracts totaling $10 million or more (but less than $50 million) for which cost or pricing data were required and the contracting officer, with concurrence or at the request of the administrative contracting officer, determines it to be in the best interest of the Government (e.g., significant estimating problems are believed to exist or the contractor's sales are predominantly Government).

(c) *Responsibilities.* (1) The contracting officer shall—

(i) Through use of the clause at 252.215–7002 Cost Estimating System Requirements, apply the disclosure, maintenance and review requirements to large business contractors meeting the criteria in paragraph (b)(2)(i) of this subsection;

(ii) Consider whether to apply the disclosure, maintenance, and review requirements to large business contractors under paragraph (b)(2)(ii) of this subsection; and

(iii) Not apply the disclosure, maintenance, and review requirement to other than large business contractors.

(2) The cognizant administrative contracting officer, for contractors subject to paragraph (b)(2) of this subsection, shall—

(i) Determine the adequacy of the disclosure and system; and

(ii) Pursue correction of any deficiencies.

(3) The cognizant auditor, on behalf of the ACO, serves as team leader in conducting estimating system reviews.

(4) A contractor subject to estimating system disclosure, maintenance, and review requirements shall—

(i) Maintain an adequate system;

(ii) Describe its system to the administrative contracting officer (ACO);

(iii) Provide timely notice of changes in the system; and

(iv) Correct system deficiencies identified by the ACO.

(d) *Characteristics of an adequate estimating system*—(1) *General.* An adequate system should provide for the use of appropriate source data, utilize sound estimating techniques and good judgment, maintain a consistent approach, and adhere to established policies and procedures.

(2) *Evaluation.* In evaluating the adequacy of a contractor's estimating system, the ACO should consider whether the contractor's estimating system, for example—

(i) Establishes clear responsibility for preparation, review and approval of cost estimates;

(ii) Provides a written description of the organization and duties of the personnel responsible for preparing, reviewing, and approving cost estimates;

(iii) Assures that relevant personnel have sufficient training, experience and guidance to perform estimating tasks in accordance with the contractor's established procedures;

(iv) Identifies the sources of data and the estimating methods and rationale used in developing cost estimates;

(v) Provides for appropriate supervision throughout the estimating process;

(vi) Provides for consistent application of estimating techniques;

(vii) Provides for detection and timely correction of errors;

(viii) Protects against cost duplication and omissions;

(ix) Provides for the use of historical experience, including historical vendor pricing information, where appropriate;

(x) Requires use of appropriate analytical methods;

(xi) Integrates information available from other management systems, where appropriate;

(xii) Requires management review including verification that the company's estimating policies, procedures

and practices comply with this regulation;

(xiii) Provides for internal review of and accountability for the adequacy of the estimating system, including the comparison of projected results to actual results and an analysis of any differences;

(xiv) Provides procedures to update cost estimates in a timely manner throughout the negotiation process; and

(xv) Addresses responsibility for review and analysis of the reasonableness of subcontract prices.

(3) *Indicators of potentially significant estimating deficiencies.* The following examples indicate conditions that may produce or lead to significant estimating deficiencies—

(i) Failure to ensure that historical experience is available to and utilized by cost estimators, where appropriate;

(ii) Continuing failure to analyze material costs or failure to perform subcontractor cost reviews as required.

(iii) Consistent absence of analytical support for significant proposed cost amounts;

(iv) Excessive reliance on individual personal judgment where historical experience or commonly utilized standards are available;

(v) Recurring significant defective pricing findings within the same cost element(s);

(vi) Failure to integrate relevant parts of other management systems (e.g., production control or cost accounting) with the estimating system so that the ability to generate reliable cost estimates is impaired; and

(vii) Failure to provide established policies, procedures, and practices to persons responsible for preparing and supporting estimates.

(e) *Review Procedures.* Cognizant audit and contract administration activities shall—

(1) Establish and manage regular programs for reviewing selected contractors' estimating systems.

(2) Conduct reviews as a team effort.

(i) The contract auditor will be the team leader.

(ii) The team leader will—

(A) Coordinate with the ACO to ensure that team membership includes qualified contract administration technical specialists.

(B) Advise the ACO and contractor of significant findings during the conduct of the review and during the exit conference.

(C) Prepare a team report.

(*1*) The ACO or a representative should—

(*i*) Coordinate the contract administration activity's review;

(*ii*) Consolidate findings and recommendations; and

(*iii*) When appropriate, prepare a comprehensive written report for submission to the auditor.

(*2*) The contract auditor will attach the ACO's report to the team report.

(3) Tailor reviews to take full advantage of the day-to-day work done by both organizations.

(4) Conduct a review every three years of contractors subject to the disclosure requirements. The ACO and auditor may lengthen or shorten the three-year period based on their joint risk assessment of the contractor's past experience and current vulnerability.

(f) *Disposition of survey team findings*—(1) *Reporting of survey team findings.* The auditor will document the findings and recommendations of the survey team in a report to the ACO. If there are significant estimating deficiencies, the auditor will recommend disapproval of all or portions of the estimating system.

(2) *Initial notification to the contractor.* The ACO will provide a copy of the team report to the contractor and, unless there are no deficiencies mentioned in the report, ask the contractor to submit a written response in 30 days, or a reasonable extension.

(i) If the contractor agrees with the report, the contractor has 60 days from the date of initial notification to correct any identified deficiencies or submit a corrective action plan showing milestones and actions to eliminate the deficiencies.

(ii) If the contractor disagrees, the contractor should provide rationale in its written response.

(3) *Evaluation of contractor's response.* The ACO, in consultation with the auditor, will evaluate the contractor's response to determine whether—

(i) The estimating system contains deficiencies which need correction;

(ii) The deficiencies are significant estimating deficiencies which would result in disapproval of all or a portion of the contractor's estimating system; or

(iii) The contractor's proposed corrective actions are adequate to eliminate the deficiency.

(4) *Notification of ACO determination*. The ACO will notify the contractor and the auditor of the determination and, if appropriate, of the Government's intent to disapprove all or selected portions of the system. The notice shall—

(i) List the cost elements covered;

(ii) Identify any deficiencies requiring correction; and

(iii) Require the contractor to correct the deficiencies within 45 days or submit an action plan showing milestones and actions to eliminate the deficiencies.

(5) *Notice of disapproval*. If the contractor has neither submitted an acceptable corrective action plan nor corrected significant deficiencies within 45 days, the ACO shall disapprove all or selected portions of the contractor's estimating system. The notice of disapproval must—

(i) Identify the cost elements covered;

(ii) List the deficiencies which prompted the disapproval; and

(iii) Be sent to the cognizant auditor, and each contracting and contract administration office having substantial business with the contractor.

(6) *Monitoring contractor's corrective action*. The auditor and ACO will monitor the contractor's progress in correcting deficiencies. If the contractor fails to make adequate progress, the ACO shall take whatever action is necessary to ensure that the contractor corrects the deficiencies. Examples of actions the ACO can take are: Bringing the issue to the attention of higher level management, reducing or suspending progress payments (see FAR 32.503–6), and recommending nonaward of potential contracts.

(7) *Withdrawal of estimating system disapproval*. The ACO will withdraw the disapproval when the ACO determines that the contractor has corrected the significant system deficiencies. The ACO will notify the contractor, the auditor, and affected contracting and contract administration activities of the withdrawal.

(g) *Impact of estimating system deficiencies on specific proposals*. (1) Field pricing teams will discuss identified estimating system deficiencies and their impact in all reports on contractor proposals until the deficiencies are resolved.

(2) The contracting officer responsible for negotiation of a proposal generated by an estimating system with an identified deficiency shall evaluate whether the deficiency impacts the negotiations. If it does not, the contracting officer should proceed with negotiations. If it does, the contracting officer should consider other alternatives, e.g.—

(i) Allowing the contractor additional time to correct the estimating system deficiency and submit a corrected proposal;

(ii) Considering another type of contract, e.g., an FPIF instead of an FFP;

(iii) Using additional cost analysis techniques to determine the reasonableness of the cost elements affected by the system's deficiency;

(iv) Segregating the questionable areas as a cost reimbursable line item;

(v) Reducing the negotiation objective for profit or fee; or

(vi) Including a contract (reopener) clause that provides for adjustment of the contract amount after award.

(3) The contracting officer who incorporates a reopener clause into the contract is responsible for negotiating price adjustments required by the clause. Any reopener clause necessitated by an estimating deficiency should—

(i) Clearly identify the amounts and items which are in question at the time of negotiation;

(ii) Indicate a specific time or subsequent event by which the contractor will submit a supplemental proposal, including cost or pricing data, identifying the cost impact adjustment necessitated by the deficient estimating system;

(iii) Provide for the contracting officer to unilaterally adjust the contract price if the contractor fails to submit the supplemental proposal; and

(iv) Provide that failure of the Government and the contractor to agree to the price adjustment shall be a dispute under the Disputes clause.

(h) *Contract clause.* Use the clause at 252.215–7002, Cost Estimating System Requirements, in all solicitations and contracts to be awarded on the basis of cost or pricing data.

[56 FR 36326, July 31, 1991, as amended at 56 FR 67213, Dec. 30, 1991; 62 FR 40472, July 29, 1997]

215.870—215.872 [Reserved]

215.873 Estimated data prices.

(a) The Department of Defense requires estimates of the prices of data in order to evaluate the cost to the Government of data items in terms of their management, product, or engineering value.

(b) When data are required to be delivered under a contract, the solicitation will include DD Form 1423, Contract Data Requirements List. The form and the provision included in the solicitation request the offeror to state what portion of the total price is estimated to be attributable to the production or development of the listed data for the Government (not to the sale of rights in the data). However, offerors' estimated prices may not reflect all such costs; and different offerors may reflect these costs in a different manner, for the following reasons—

(1) Differences in business practices in competitive situations;

(2) Differences in accounting systems among offerors;

(3) Use of factors or rates on some portions of the data;

(4) Application of common effort to two or more data items; and

(5) Differences in data preparation methods among offerors.

(c) Data price estimates should not be used for contract pricing purposes without further analysis.

(d) The contracting officer shall ensure that the contract does not include a requirement for data that the contractor has delivered or is obligated to deliver to the Government under another contract or subcontract, and that the successful offeror identifies any such data required by the solicitation. However, where duplicate data are desired, the contract price shall include the costs of duplication, but not of preparation, of such data.

[56 FR 36326, July 31, 1991, as amended at 62 FR 2613, Jan. 17, 1997]

Subpart 215.9—Profit

215.902 Policy.

Departments and agencies shall use a structured approach for developing a prenegotiation profit or fee objective (profit objective) on any negotiated contract action that requires cost analysis, except on cost-plus-award-fee contracts (but see 215.974). There are three approaches—

(1) The weighted guidelines method;

(2) The modified weighted guidelines method; and

(3) An alternate structured approach.

215.903 Contracting officer responsibilities.

(a) Also, do not perform a profit analysis when assessing cost realism in competitive acquisitions.

(b) The contracting officer—

(1) Shall use the weighted guidelines method (see 215.971), unless—

(A) The modified weighted guidelines method applies; or

(B) An alternate approach is justified.

(2) Shall use the modified weighted guidelines method (see 215.972) on contract actions with nonprofit organizations;

(3) May use an alternate structured approach (see 215.973) when—

(i) The contract action is—

(A) Under $500,000;

(B) For architect-engineer or construction work;

(C) Primarily for delivery of material from subcontractors; or

(D) A termination settlement; or

(ii) The weighted guidelines method does not produce a reasonable overall profit objective and the head of the contracting activity approves use of the alternate approach in writing.

(4) Shall use the weighted guidelines method to establish a basic profit rate under a formula type pricing agreement, and may then use the basic rate on all actions under the agreement, provided that conditions affecting profit do not change.

(5) Shall document the profit analysis in the price negotiation memorandum.

(e) Although specific agreement on the applied weights or values for individual profit factors shall not be attempted, the contracting officer may encourage the contractor to—

(1) Present the details of its proposed profit amounts in the weighted guidelines format or similar structured approach; and

(2) Use the weighted guidelines method in developing profit objectives for negotiated subcontracts.

(f) The contracting officer must also verify that relevant variables have not materially changed (e.g., performance risk, interest rates, progress payment rates, distribution of facilities capital).

215.905 Profit-analysis factors.

215.905–1 Common factors.

The common factors are embodied in the DoD structured approaches and need not be further considered by the contracting officer.

215.970 DD Form 1547, Record of Weighted Guidelines Method Application.

(a) The DD Form 1547—

(1) Provides a vehicle for performing the analysis necessary to develop a profit objective;

(2) Provides a format for summarizing profit amounts subsequently negotiated as part of the contract price; and

(3) Serves as the principal source document for reporting profit statistics to DoD's management information system.

(b) The Military Departments are responsible for establishing policies and procedures for feeding the DoD-wide management information system on profit and fee statistics (see 215.975).

(c) The contracting officer shall—

(1) Use and prepare a DD Form 1547 whenever a structured approach to profit analysis is required by 215.902. (See 215.971, 215.972, and 215.973 for guidance on using the structured approaches.) Administrative instructions for completing the form are in 253.215–70.

(2) Ensure that the DD Form 1547 is accurately completed. The contracting officer is responsible for the correction of any errors detected by the management system auditing process.

215.971 Weighted guidelines method.

215.971–1 General.

(a) The weighted guidelines method focuses on three profit factors—

(1) Performance risk;

(2) Contract type risk; and

(3) Facilities capital employed.

(b) The contracting officer assigns values to each profit factor; the value multiplied by the base results in the profit objective for that factor. Each profit factor has a normal value and a designated range of values. The normal value is representative of average conditions on the prospective contract when compared to all goods and services acquired by DoD. The designated range provides values based on above normal or below normal conditions. In the price negotiation memorandum, the contracting officer need not explain assignment of the normal value, but should address conditions that justify assignment of other than the normal value.

215.971–2 Performance risk.

(a) *Description*. This profit factor addresses the contractor's degree of risk in fulfilling the contract requirements. The factor consists of three parts—

(1) Technical—the technical uncertainties of performance.

(2) Management—the degree of management effort necessary to ensure that contract requirements are met.

(3) Cost control—the contractor's efforts to reduce and control costs.

(b) *Determination*. The following extract from the DD Form 1547 is annotated to describe the process.

Item	Contractor Risk Factors	Assigned Weighting	Assigned Value	Base (Item 18)	Profit Objective
21	Technical	(1)	(2)	N/A	N/A
22	Management	(1)	(2)	N/A	N/A
23	Cost Control	(1)	(2)	N/A	N/A
24	Performance Risk (Composite)	N/A	(3)	(4)	(5)

(1) Assign a weight (percentage) to each element according to its input to the total performance risk. The total of the three weights equals 100%.

(2) Select a value for each element from the list in paragraph (c) of this subsection using the evaluation criteria in paragraphs (d), (e), and (f) of this subsection.

(3) Compute the composite as shown in the following example—

Assigned—	Assigned weighting (percent)	Assigned value (percent)	Weighted value (percent)
Technical	30	5.0	1.5
Management	30	4.0	1.2
Cost Control	40	4.5	1.8
Composite Value	100		4.5

(4) Insert the amount from Block 18 of the DD Form 1547. Block 18 is total contract costs, excluding general and administrative expenses, contractor independent research and development/bid and proposal expenses, and facilities capital cost of money.

(5) Multiply (3) by (4).

(c) *Values:* Normal and designated ranges.

Standard Alternate	Normal value (percent)	Designated range (percent)
Standard	4	2 to 6.
Alternate	6	4 to 8

(1) Standard. The standard designated range should apply to most contracts.

(2) Alternate. Contracting officers may use the alternate designated range for research and development and service contractors when these contractors require relatively low capital investment in buildings and equipment when compared to the defense industry overall. If the alternate designated range is used, do not give any profit for facilities capital employed (see 215.971–4(c)(3)).

(d) *Evaluation criteria for technical.* (1) Review the contract requirements and focus on the critical performance elements in the statement of work or specifications. Factors to consider include—

(i) Technology being applied or developed by the contractor;

(ii) Technical complexity;

(iii) Program maturity;

(iv) Performance specifications and tolerances;

(v) Delivery schedule; and

(vi) Extent of a warranty or guarantee.

(2) Above normal conditions. (i) The contracting officer may assign a higher than normal value in those cases where there is a substantial technical risk. Indicators are—

(A) The contractor is either developing or applying advanced technologies;

(B) Items are being manufactured using specifications with stringent tolerance limits;

(C) The efforts require highly skilled personnel or require the use of state of the art machinery;

(D) The services and analytical efforts are extremely important to the Government and must be performed to exacting standards;

(E) The contractor's independent development and investment has reduced the Government's risk or cost;

(F) The contractor has accepted an accelerated delivery schedule to meet DoD requirements; or

(G) The contractor has assumed additional risk through warranty provisions.

(ii) Extremely complex, vital efforts to overcome difficult technical obstacles which require personnel with exceptional abilities, experience, and professional credentials may justify a value significantly above normal.

(iii) The following may justify a maximum value—

(A) Development or initial production of a new item, particularly if performance or quality specifications are tight; or

(B) A high degree of development or production concurrency.

(3) Below normal conditions.

(i) The contracting officer may assign a lower than normal value in those cases where the technical risk is low. Indicators are—

(A) Acquisition is for off-the-shelf items;

(B) Requirements are relatively simple;

(C) Technology is not complex;

(D) Efforts do not require highly skilled personnel;

(E) Efforts are routine;

(F) Programs are mature; or

(G) Acquisition is a follow-on effort or a repetitive type acquisition.

(ii) The contracting officer may assign a value significantly below normal for—

(A) Routine services;

(B) Production of simple items;

(C) Rote entry or routine integration of Government furnished information; or

(D) Simple operations with Government-furnished property.

(e) *Evaluation criteria for management.* (1) The contracting officer should—

(i) Assess the contractor's management and internal control systems using contracting office information and reviews made by field contract administration offices or other DoD field offices;

(ii) Assess the management involvement expected on the prospective contract action;

(iii) Consider the degree of cost mix as an indication of the types of resources applied and value-added by the contractor; and

(iv) Consider the contractor's support of Federal socioeconomic programs.

(2) Above normal conditions. (i) The contracting officer may assign a higher than normal value when the management effort is intense. Indicators of this are—

(A) The contractor's value-added is both considerable and reasonably difficult;

(B) The effort involves a high degree of integration or coordination; or

(C) The contractor has a substantial record of active participation in Federal socioeconomic programs.

(ii) The contracting officer may justify a maximum value when the effort—

(A) Requires large scale integration of the most complex nature;

(B) Involves major international activities with significant management coordination (e.g., offsets with foreign vendors); or

(C) Has critically important milestones.

(3) Below normal conditions. (i) The contracting officer may assign a lower than normal value when the management effort is minimal. Indicators of this are—

(A) The program is mature and many end item deliveries have been made;

(B) The contractor adds minimum value to an item;

(C) The efforts are routine and require minimal supervision;

(D) The contractor provides poor quality, untimely proposals;

(E) The contractor fails to provide an adequate analysis of subcontractor costs; or

(F) The contractor does not cooperate in the evaluation and negotiation of the proposal.

(ii) The following may justify a value significantly below normal—

(A) Reviews performed by the field contract administration offices disclose unsatisfactory management and internal control systems (e.g., quality assurance, property control, safety, security); or

(B) The effort requires an unusually low degree of management involvement.

(f) *Evaluation criteria for cost control.* (1) The contracting officer should evaluate—

(i) The expected reliability of the contractor's cost estimates (including the contractor's cost estimating system);

(ii) The contractor's cost reduction initiatives (e.g., competition advocacy programs, dual sourcing, spare parts pricing reform, value engineering);

(iii) The adequacy of the contractor's management approach to controlling cost and schedule; and

(iv) Any other factors which affect the contractor's ability to meet the cost targets, e.g., foreign currency exchange rates and inflation rates.

(2) Above normal conditions. The contracting officer may assign a higher than normal value if the contractor can demonstrate a highly effective cost control program. Indicators of this are—

(i) The contractor provides fully documented and reliable cost estimates;

(ii) The contractor has an aggressive cost reduction program that has demonstrable benefits;

(iii) The contractor uses a high degree of subcontract competition (e.g., aggressive dual sourcing); or

(iv) The contractor has a proven record of cost tracking and control.

(3) Below normal conditions. The contracting officer may assign a lower than normal value if the contractor demonstrates minimal concern for cost control. Indicators are—

(i) The contractor's cost estimating system is marginal;

(ii) The contractor has made minimal effort to initiate cost reduction programs;

(iii) The contractor's cost proposal is inadequate;

(iv) The contractor has a record of cost overruns or other indication of unreliable cost estimates and lack of cost control.

215.971–3 Contract type risk and working capital adjustment.

(a) *Description.* The contract type risk factor focuses on the degree of cost risk accepted by the contractor under varying contract types. The working capital adjustment is an adjustment added to the profit objective for contract type risk. It only applies to fixed-price contracts that provide for progress payments. Though it uses a formula approach, it is not intended to be an exact calculation of the cost of working capital. Its purpose is to give general recognition to the contractor's cost of working capital under varying contract circumstances, financing policies, and the economic environment.

(b) *Determination.* The following extract from the DD 1547 is annotated to explain the process.

Item	Contractor risk factors	Assigned value	Base (Item 18)	Profit objective
25	Contract Type Risk	(1)	(2)	(3)

		Cost financed	Length factor	Interest rate	
26	Working Capital (4)	(5)	(6)	(7)	(8)

(1) Select a value from the list of contract types in paragraph (c) of this subsection using the evaluation criteria in paragraph (d) of this subsection.

(2) Insert the amount from Block 18, i.e., the total allowable costs excluding general and administrative expenses, independent research and development/bid proposal expenses, and facilities capital cost of money.

(3) Multiply (1) by (2).

(4) Only complete this Block when the prospective contract is a fixed-price contract containing provisions for progress payments.

(5) Insert the amount computed per paragraph (e) of this subsection.

(6) Insert the appropriate figure from paragraph (f) of this subsection.

(7) Use the interest rate established by the Secretary of the Treasury (230.7101(a)). Do not use any other interest rate.

(8) Multiply (5) by (6) by (7). This is the working capital adjustment. It shall not exceed 4 percent of the contract costs in Block 20.

(c) *Values:* Normal and designated ranges.

Contract type	Notes	Normal value (percent)	Designated range (percent)
Firm fixed-price, no financing.	(1)	5	4 to 6.
Firm fixed-price, with financing.	(2)	3	2 to 4.
Fixed-price-incentive, no financing.	(1)	3	2 to 4.
Fixed-price with redeterminable provision.	(3)		
Fixed-price-incentive, with financing.	(2)	1	0 to 2.
Cost-plus-incentive-fee.	(4)	1	0 to 2.
Cost-plus-fixed-fee	(4)	.5	0 to 1.
Time and material contracts (including overhaul contracts priced on time and material basis).	(5)	.5	0 to 1.
Labor-hour contracts.	(5)	.5	0 to 1.
Firm fixed-price-level-of-effort-term.	(5)	.5	0 to 1.

(1) *No financing* means that the contract either does not provide progress payments, or provides them only on a limited basis, such as financing of first articles. Do not compute a working capital adjustment.

(2) *With financing* means progress payments. When progress payments are present, compute a working capital adjustment (Block 26).

(3) For the purposes of assigning profit values, treat a fixed-price contract with redeterminable provisions as if it were a fixed-price-incentive contract with below normal conditions.

(4) Cost-plus contracts shall not receive the working capital adjustment.

(5) These types of contracts are considered cost-plus-fixed-fee contracts for the purposes of assigning profit values. They shall not receive the working capital adjustment in Block 26. However, they may receive higher than normal values within the designated range to the extent that portions of cost are fixed.

(d) *Evaluation criteria*—(1) *General.* The contracting officer should consider elements that affect contract type risk such as—

(i) Length of contract;

(ii) Adequacy of cost data for projections;

(iii) Economic environment;

(iv) Nature and extent of subcontracted activity;

(v) Protection provided to the contractor under contract provisions (e.g., economic price adjustment clauses);

(vi) The ceilings and share lines contained in incentive provisions; and

(vii) Risks associated with contracts for foreign military sales (FMS) which are not funded by U.S. appropriations.

(2) *Mandatory*—The contracting officer shall assess the extent to which costs have been incurred prior to definitization of the contract action (see also 217.7404–6(a)). The assessment shall include any reduced contractor risk on both the contract before definitization and the remaining portion of the contract. When costs have been incurred prior to definitization, generally regard the contract type risk to be in the low end of the designated range. If a substantial portion of the costs have been incurred prior to definitization, the contracting officer may assign a value as low as 0%, regardless of contract type.

(3) *Above normal conditions.* The contracting officer may assign a higher than normal value when there is substantial contract type risk. Indicators of this are—

(i) Efforts where there is minimal cost history;

(ii) Long-term contracts without provisions protecting the contractor, particularly when there is considerable economic uncertainty;

(iii) Incentive provisions (e.g., cost and performance incentives) which place a high degree of risk on the contractor; or

(iv) FMS sales (other than those under DoD cooperative logistics support arrangements or those made from U.S. Government inventories or stocks) where the contractor can demonstrate that there are substantial risks above those normally present in DoD contracts for similar items.

(4) *Below normal conditions.* The contracting officer may assign a lower than normal value when the contract type risk is low. Indicators of this are—

(i) Very mature product line with extensive cost history;

(ii) Relatively short-term contracts;

(iii) Contractual provisions which substantially reduce the contractor's risk; or

(iv) Incentive provisions which place a low degree of risk on the contractor.

(e) *Costs financed.* (1) Costs financed equal total costs multiplied by the portion (percent) of costs financed by the contractor.

(2) Total costs equal Block 20 (i.e., all allowable costs, including general and administrative and independent research and development/bid and proposal, but excluding facilities capital cost of money), reduced as appropriate when—

(i) The contractor has little cash investment (e.g., subcontractor progress payments liquidated late in period of performance);

(ii) Some costs are covered by special financing provisions, such as advance payments; or

(iii) The contract is multiyear and there are special funding arrangements.

(3) The portion financed by the contractor is generally the portion not covered by progress payments, i.e., 100% minus the customary progress payment rate (FAR 32.501). For example, if a contractor receives progress payments at 75%, the portion financed by the contractor is 25%. On contracts that provide flexible progress payments (252.232–7003) or progress payments to small businesses, use the customary progress payment rate for large businesses.

(f) *Contract length factor.* (1) This is the period of time that the contractor has a working capital investment in the contract. It—

(i) Is based on the time necessary for the contractor to complete the substantive portion of the work;

(ii) Is not necessarily the period of time between contract award and final delivery (or final payment), as periods of minimal effort should be excluded;

(iii) Should not include periods of performance contained in option provisions; and

(iv) Should not, for multiyear contracts, include periods of performance beyond that required to complete the initial program year's requirements.

(2) The contracting officer—

(i) Should use the following table to select the contract length factor;

(ii) Should develop a weighted average contract length when the contract has multiple deliveries; and

(iii) May use sampling techniques provided they produce a representative result.

TABLE

Period to perform substantive portion (in months)	Contract length factor
21 or less	.40
22 to 27	.65
28 to 33	.90
34 to 39	1.15
40 to 45	1.40
46 to 51	1.65
52 to 57	1.90
58 to 63	2.15
64 to 69	2.40
70 to 75	2.65
76 or more	2.90

(3) Example: A prospective contract has a performance period of 40 months with end items being delivered in the 34th, 36th, 38th, and 40th months of the contract. The average period is 37 months and the contract length factor is 1.15.

[56 FR 36326, July 31, 1991, as amended at 59 FR 27669, May 27, 1994]

215.971–4 Facilities capital employed.

(a) *Description.* This factor focuses on encouraging and rewarding aggressive capital investment in facilities that benefit DoD. It recognizes both the facilities capital that the contractor will employ in contract performance and the contractor's commitment to improving productivity.

(b) *Determination.* The following extract from the DD Form 1547 has been annotated to explain the process.

Item	Contractor facilities capital employed	Assigned value	Amount employed	Profit objective
27	Land	N/A	(2)	N/A
28	Buildings	(1)	(2)	(3)
29	Equipment	(1)	(2)	(3)

(1) Select a value from the list in paragraph (c) of this subsection using the evaluation criteria in paragraph (d) of this subsection.

(2) Use the allocated facilities capital attributable to land, buildings, and equipment, as derived in DD Form 1861, ''Contract Facilities Capital Cost of Money'' (see 215.871–5 and 230.7001).

(i) In addition to the net book value of facilities capital employed, consider facilities capital that is part of a formal investment plan if the contractor submits reasonable evidence that—

(A) Achievable benefits to DoD will result from the investment; and

(B) The benefits of the investment are included in the forward pricing structure.

(ii) If the value of intracompany transfers has been included in Block 18

at cost (i.e., excluding general and administrative (G&A) expenses and profit), add to the contractor's allocated facilities capital, the allocated facilities capital attributable to the buildings and equipment of those corporate divisions supplying the intracompany transfers. Do not make this addition if the value of intracompany transfers has been included in Block 18 at price (i.e., including G&A expenses and profit).

(3) Multiply (1) by (2).

(c) *Values: Normal and designated ranges.*

Notes	Asset type	Normal value (percent)	Designated range
(1)	Land	0	N/A.
(1)	Buildings	15	10% to 20%.
(1)	Equipment	35	20% to 50%.
(2)	Land	0	N/A.
(2)	Buildings	5	0% to 10%.
(2)	Equipment	20	15% to 25%.
(3)	Land	0	N/A.
(3)	Buildings	0	0%.
(3)	Equipment	0	0%.

(1) These are the normal values and ranges. They apply to all situations except those noted in (2) and (3).

(2) These alternate values and ranges apply to situations where a highly facilitized manufacturing firm will be performing a research and development or services contract. They balance the method used to allocate facilities capital cost of money, which may produce disproportionate allocation of assets to these types of efforts.

(3) When using a value from the alternate designated range for the performance risk factor (215.971–2(c)(2)), do not allow profit on facilities capital employed.

(d) *Evaluation criteria.* (1) In evaluating facilities capital employed, the contracting officer—

(i) Should relate the usefulness of the facilities capital to the goods or services being acquired under the prospective contract;

(ii) Should analyze the productivity improvements and other anticipated industrial base enhancing benefits resulting from the facilities capital investment, including—

(A) The economic value of the facilities capital, such as physical age, undepreciated value, idleness, and expected contribution to future defense needs; and

(B) The contractor's level of investment in defense related facilities as compared with the portion of the contractor's total business which is derived from DoD;

(iii) Should consider any contractual provisions that reduce the contractor's risk of investment recovery, such as termination protection clause, capital investment indemnification, and productivity saving rewards (215.870–3); and

(iv) Shall ensure that increases in facilities capital investments are not merely asset revaluations attributable to mergers, stock transfers, take-overs, sales of corporate entities, or similar actions.

(2) *Above normal conditions.* (i) The contracting officer may assign a higher than normal value if the facilities capital investment has direct, identifiable, and exceptional benefits. Indicators are—

(A) New investments in state-of-the-art technology which reduce acquisition cost or yield other tangible benefits such as improved product quality or accelerated deliveries;

(B) Investments in new equipment for research and development applications; or

(C) Contractor demonstration that the investments are over and above the normal capital investments necessary to support anticipated requirements of DoD programs.

(ii) The contracting officer may assign a value significantly above normal when there are direct and measurable benefits in efficiency and significantly reduced acquisition costs on the effort being priced. Maximum values apply only to those cases where the benefits of the facilities capital investment are substantially above normal.

(3) *Below normal conditions.* (i) The contracting officer may assign a lower than normal value if the facilities capital investment has little benefit to DoD. Indicators are—

(A) Allocations of capital apply predominantly to commercial item lines;

(B) Investments are for such things as furniture and fixtures, home or

group level administrative offices, corporate aircraft and hangars, gymnasiums; or

(C) Facilities are old or extensively idle.

(ii) The contracting officer may assign a value significantly below normal when a significant portion of defense manufacturing is done in an environment characterized by outdated, inefficient, and labor-intensive capital equipment.

[56 FR 36326, July 31, 1991, as amended at 60 FR 61596, Nov. 30, 1995]

215.972 Modified weighted guidelines method for nonprofit organizations.

(a) *Definition.* As used in this subpart, a nonprofit organization is a business entity—

(1) Which operates exclusively for charitable, scientific, or educational purposes;

(2) Whose earnings do not benefit any private shareholder or individual;

(3) Whose activities do not involve influencing legislation or political campaigning for any candidate for public office; and

(4) Which is exempted from Federal income taxation under section 501 of the Internal Revenue Code.

(b) For nonprofit organizations which are Federally funded research and development centers (FFRDCs), the contracting officer—

(1) Should consider whether any fee is appropriate. Considerations shall include the FFRDC's—

(i) Proportion of retained earnings (as established under generally accepted accounting methods) that relates to DoD contracted effort;

(ii) Facilities capital acquisition plans;

(iii) Working capital funding as assessed on operating cycle cash needs;

(iv) Contingency funding; and

(v) Provision for funding unreimbursed costs deemed ordinary and necessary to the FFRDC.

(2) Shall, when a fee is considered appropriate, compute the fee objective using the weighted guidelines method in 215.971, with the following modifications—

(i) *Modifications to performance risk (Blocks 21–24 of the DD Form 1547).* (A) If the contracting officer assigns a value from the standard designated range (215.971–2(c)), reduce the fee objective by an amount equal to 1% of the costs in Block 18 of the DD Form 1547. Show the net (reduced) amount on the DD Form 1547.

(B) If the contracting officer assigns a value from the alternate designated range, reduce the fee objective by an amount equal to 2% of the costs in Block 18 of the DD Form 1547. Show the net (reduced) amount on the DD Form 1547.

(ii) *Modifications to contract type risk (Block 25 of the DD Form 1547).* Use a designated range of −1% to 0% in lieu of the values in 215.971–3. There is no normal value.

(c) For nonprofit organizations which are entities that have been identified by the Secretary of Defense or a Secretary of a Department as receiving sustaining support on a cost-plus-fixed-fee basis from a particular DoD department or agency, compute a fee objective for covered actions using the weighted guidelines method in 215.971, modified as described in paragraph (b)(2) of this section.

(d) For all other nonprofit organizations, compute a fee objective for covered actions using the weighted guidelines method in 215.971, modified as described in paragraph (b)(2)(i) of this section.

215.973 Alternate structured approaches.

(a) The contracting officer may use an alternate structured approach under 215.903.

(b) The contracting officer may design the structure of the alternate, but it shall include—

(1) Consideration of the three basic components of profit—performance risk, contract type risk (including working capital), and facilities capital employed. However, the contracting officer is not required to complete Blocks 21 through 30 of the DD Form 1547.

(2) Offset for facilities capital cost of money.

(i) The contracting officer shall reduce the overall prenegotiation profit objective by the lesser of 1% of total cost or the amount of facilities capital cost of money. The profit amount in

the negotiation summary of the DD Form 1547 must be net of the offset.

(ii) This adjustment is needed for the following reason: The values of the profit factors used in the weighted guidelines method were adjusted to recognize the shift in facilities capital cost of money from an element of profit to an element of contract cost (FAR 31.205–10) and reductions were made directly to the profit factors for performance risk. In order to ensure that this policy is applied to all DoD contracts which allow facilities capital cost of money, similar adjustments shall be made to contracts which use alternate structured approaches.

215.974 Fee requirements for cost-plus-award-fee contracts.

In developing a fee objective for cost-plus-award-fee contracts, the contracting officer shall—

(a) Follow the guidance in FAR 16.404–2 and 216.404–2;

(b) Not use the weighted guidelines method or alternate structured approach;

(c) Apply the offset policy in 215.973(b)(2) for facilities capital cost of money, i.e., reduce the base fee by the lesser of 1% of total costs or the amount of facilities capital cost of money; and

(d) Not complete a DD Form 1547.

215.975 Reporting profit and fee statistics.

(a) Contracting officers in contracting offices which participate in the management information system for profit and fee statistics send completed DD Forms 1547 on actions of $500,000 or more, where the contracting officer used either the weighted guidelines method, an alternate structured approach, or the modified weighted guidelines method, to their designated office within 30 days after contract award.

(b) Participating contracting offices and their designated offices are—

Contracting office	Designated office
Army:	
All	Army Procurement Research and Analysis Office, ATTN: SFRD–KPR(WGL), Bldg 12500, C Wing, Ft. Lee, VA 23801–6045.
Navy:	
Naval Air Systems Command [1]	Commander, Naval Supply Systems Command, ATTN: SUP 026, Washington, DC 20376–5000.
Naval Sea Systems Command [1]	
Space and Naval Warfare Systems Command [1]	
Naval Facilities Engineering Command [1]	
Naval Supply Systems Command [1]	
Office of Naval Research [1]	
Headquarters, United States Marine Corps [1]	
Strategic Systems Programs Office [1]	
Military Sealift Command [1]	
Automatic Data Processing Selection Office [1]	
Navy Regional Data Automation Center [1]	
Naval Research Laboratory [1]	
Navy Commercial Communications Center [1]	
Naval Aviation Depot Operations Center [1]	
Air Force:	
Air Force Materiel Command (all field offices)	Air Force Materiel Command, 645 CCSG/SCOS, ATTN: J010 Clerk, 2721 Sacramento Street, Wright-Patterson Air Force Base, Ohio 45433.

[1] Includes all subordinate field offices.

(c) When negotiation of a contract action over $500,000 has been delegated to another contracting agency (e.g., to an administrative contracting officer), that agency shall ensure that a copy of the DD Form 1547 is provided to the delegating office for reporting purposes within 30 days from negotiation of the contract action.

(d) Contracting offices outside the United States, its possessions, and Puerto Rico are exempt from reporting.

(e) Designated offices send a quarterly (non-cumulative) report of DD Form 1547 data to: Washington Headquarters Service, Directorate for Information Operations and Reports (WHS/

DIOR), 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302.

(f) In preparing/sending the quarterly report, designated offices—

(1) Perform the necessary audits to ensure information accuracy;

(2) Do not enter classified information;

(3) Transmit the report via computer magnetic tape using the procedures, format, and editing process issued by the Director of Defense Procurement; and

(4) Send the reports not later than the 30th day after the close of the quarterly reporting periods.

(g) These reporting requirements have been assigned report control symbol: P&L(Q) 1751.

[56 FR 36326, July 31, 1991, as amended at 57 FR 53599, Nov. 12, 1992; 59 FR 27669, May 27, 1994]

Subpart 215.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

215.1001 Notifications to unsuccessful offerors.

(b) *Preaward notices.*

(2) Acquisitions processed under small purchase procedures are exempt from the requirements of FAR 15.1001(b)(2).

PART 216—TYPES OF CONTRACTS

Sec.

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Subpart 216.7—Agreements

216.703 Basic ordering agreements.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36340, July 31, 1991, unless otherwise noted.

Subpart 216.1—Selecting Contract Types

216.104 Factors in selecting contract types.

(d) Design stability should also be considered.

216.104–70 Research and development.

(a) *General.* There are several categories of research and development (R&D) contracts: research, exploratory development, advanced development, engineering development, and operational systems development (see 235.001 for definitions). Each category has a primary technical or functional objective. Different parts of a project may fit several categories. The contract type must fit the work required, not just the classification of the overall program.

(b) *Research and exploratory development.* (1) Price is not necessarily the

primary factor in determining the contract type.

(2) The nature of the work to be performed will usually result in a cost-plus award fee, cost-plus fixed fee term, cost-no-fee, or cost-sharing contract.

(3) If the Government and the contractor can identify and agree upon the level of contractor effort required, the contracting officer may select a firm fixed-price level-of-effort contract, except see 235.006.

(4) If the Government and the contractor agree that an incentive arrangement is desirable and capable of being evaluated after completion of the work, the contracting officer may use an incentive type contract.

(c) *Advanced development.* (1) The nature of the work to be performed often results in a cost-plus fixed fee completion type contract.

(2) Contracting officers may select incentive contracts if—

(i) Realistic and measurable targets are identified; and

(ii) Achievement of those targets is predictable with a reasonable degree of accuracy.

(3) Contracting officers should not use contracts with only cost incentives where—

(i) There will be a large number of major technical changes; or

(ii) Actions beyond the control of the contractor may influence the contractor's achievement of cost targets.

(d) *Engineering development and operational systems development.* (1) When selecting contract types, also consider—

(i) The degree to which the project is clearly defined, which in turn affects the contractor's ability to provide accurate cost estimates;

(ii) The need for effort that will overlap that of earlier stages;

(iii) The need for firm technical direction by the Government; and

(iv) The degree of configuration control the Government will exercise.

(2) For development efforts, particularly for major defense systems, the preferred contract type is cost reimbursement.

(3) Contracting officers should use fixed-price type contracts when risk has been reduced to the extent that realistic pricing can occur; e.g., when a program has reached the final stages of development and technical risks are minimal, except see 235.006.

Subpart 216.2—Fixed-Price Contracts

216.203 Fixed-price contracts with economic price adjustment.

216.203–4 Contract clauses.

(a) *Adjustment based on established prices-standard supplies.* Generally, use the clause at FAR 52.216–2, Economic Price Adjustment-Standard Supplies only when—

(i) The total contract price is over the small purchase threshold in FAR 13.000; and

(ii) Delivery will not be completed within 6 months after the contract date.

(b) *Adjustment based on established prices-semistandard supplies.* Generally, use the clause at FAR 52.216–3, Economic Price Adjustment-Semistandard Supplies, only when—

(i) The total contract price is over the small purchase threshold in FAR 13.000; and

(ii) Delivery will not be completed within 6 months after the contract date.

(c) *Adjustments based on actual cost of labor or material.*

(2) Limit use of the clause at FAR 52.216–4, Economic Price Adjustment-Labor and Material, to contracts in which the price exceeds $50,000 and the period of performance exceeds 6 months, unless otherwise approved by the chief of the contracting office. Use an appropriate modification of the clause in sealed bidding.

(4) Apply the full amount of the decrease in the labor rates and fringe benefits or unit prices for materials.

(d) *Adjustments based on cost indexes of labor or material.* Use the following guidelines—

(i) Do not make the clause unnecessarily complex.

(ii) Normally, the clause should not provide either a ceiling or a floor for adjustment unless adjustment is based on indices below the four digit level of the Bureau of Labor Statistics—

(A) Producer Price Index;

(B) Employment Cost Index for wages and salaries, benefits, and compensation costs for aerospace industries; or

(C) Wage and Income Series by Standard Industrial Classification (Labor).

(iii) Normally, the clause should cover all potential economic fluctuations within the original contract period of performance.

(iv) The clause must accurately identify the index(es) upon which adjustments will be based.

(A) It must provide for a means to adjust for appropriate economic fluctuation in the event publication of the movement of the designated index is discontinued. This might include the substitution of another index if the time remaining would justify doing so and an appropriate index is reasonably available, or some other method for repricing the remaining portion of work to be performed.

(B) Normally, there should be no need to make an adjustment if computation of the identified index is altered. However, it may be appropriate to provide for adjustment of the economic fluctuation computations in the event there is such a substantial alteration in the method of computing the index that the original intent of the parties is negated.

(C) When an index to be used is subject to revision (e.g., the Bureau of Labor Statistics Producer Price Indexes), the economic price adjustment clause must specify that any economic price adjustment will be based on a revised index and must identify which revision to the index will be used.

(v) Construct the index to encompass a large sample of relevant items while still bearing a logical relationship to the type of contract costs being measured. The basis of the index should not be so large and diverse that it is significantly affected by fluctuations not relevant to contract performance, but it must be broad enough to minimize the effect of any single company, including the anticipated contractor(s).

(vi) Construction of an index is largely dependent upon three general series published by the U.S. Department of Labor, Bureau of Labor Statistics (BLS). These are the—

(A) Industrial Commodities portion of the Producer Price Index;

(B) Employment Cost Index for wages and salaries, benefits, and compensation costs for aerospace industries; and

(C) Wage and Income Series by Standard Industrial Classification (Labor). Since there is no BLS published series currently available that relates directly to total prices of delivered DoD aircraft, ships, missiles, electronics, etc., it will be necessary to construct composite indices from major portions of the three series identified.

(vii) Normally, do not use more than two indices, i.e., one for labor (direct and indirect) and one for material (direct and indirect).

(viii) The clause must establish and properly identify a base period comparable to the contract periods for which adjustments are to be made as a reference point for application of an index.

(ix) The clause should not provide for an adjustment beyond the original contract performance period, including options. The start date for the adjustment may be the beginning of the contract or a later time, as appropriate, based on the projected rate of expenditures.

(x) The expenditure profile for both labor and material should be based on a predetermined rate of expenditure (expressed as the percentage of material or labor usage as it relates to the total contract price) in lieu of actual cost incurred.

(A) If the clause is to be used in a competitive acquisition, determine the labor and material allocations, with regard to both mix of labor and material and rate of expenditure by percentage, in a manner which will, as nearly as possible, approximate the average expenditure profile of all companies to be solicited so that all companies may compete on an equal basis.

(B) If the clause is to be used in a noncompetitive acquisition, the labor and material allocations may be subject to negotiation and agreement.

(C) For multiyear contracts, establish predetermined expenditure profile tables for each of the annual increments in the multiyear buy. Each of the second and subsequent year tables

must be cumulative to reflect the total expenditures for all increments funded through the latest multiyear funding.

(xi) The clause should state the percentage of the contract price subject to price adjustment.

(A) Normally, do not apply adjustments to the profit portion of the contract.

(B) Examine the labor and material portions of the contract to exclude any areas that do not require adjustment. For example, it may be possible to exclude—

(*1*) Subcontracting for short periods of time during the early life of the contract which could be covered by firm-fixed-priced subcontracting;

(*2*) Certain areas of overhead, e.g., depreciation charges, prepaid insurance costs, rental costs, leases, certain taxes, and utility charges;

(*3*) Labor costs for which a definitive union agreement exists; and

(*4*) Those costs not likely to be affected by fluctuation in the economy.

(C) Allocate that part of the contract price subject to adjustment to specific periods of time (e.g., quarterly, semi-annually, etc.) based on the most probable expenditure or commitment basis (expenditure profile).

(xii) The clause should provide for definite times or events that trigger price adjustments. Adjustments should be frequent enough to afford the contractor appropriate economic protection without creating a burdensome administrative effort. The adjustment period should normally range from quarterly to annually.

(xiii) When the contract contains cost incentives, any sums paid to the contractor on account of economic price adjustment provisions must be subtracted from the total of the contractor's allowable costs for the purpose of establishing the total costs to which the cost incentive provisions apply. If the incentive arrangement is cited in percentage ranges, rather than dollar ranges, above and below target costs, structure the economic price adjustment clause to maintain the original contract incentive range in dollars.

(xiv) The economic price adjustment clause should provide that once the labor and material allocations and the portion of the contract price subject to price adjustment have been established, they remain fixed through the life of the contract and shall not be modified except in the event of significant changes in the scope of the contract. The clause should state that pricing actions pursuant to the Changes clause or other provisions of the contract will be priced as though there were no provisions for economic price adjustment. However, subsequent modifications may include a change to the delivery schedule or significantly change the amount of, or mix of, labor or material for the contract. In such cases, it may be appropriate to prospectively apply economic price adjustment coverage. This may be accomplished by—

(A) Using an economic price adjustment (EPA) clause that applies only to the effort covered by the modification;

(B) Revising the baseline data or period in the EPA clause for the basic contract to include the new work; or

(C) Using an entirely new EPA clause for the entire contract, including the new work.

(xv) Consistent with the factors in paragraphs (d)(i) through (xiv) of this subsection, it may also be appropriate to provide in the prime contract for similar economic price adjustment arrangements between the prime contractor and affected subcontractors to allocate risks properly and ensure that those subcontractors are provided similar economic protection.

(xvi) When economic price adjustment clauses are included in contracts that do not require submission of cost or pricing data as provided for in FAR 15.804–1, the contracting officer must obtain adequate information to establish the baseline from which adjustments will be made. The contracting officer may require verification of the data submitted to the extent necessary to permit reliance upon the data as a reasonable baseline.

[56 FR 36340, July 31, 1991, as amended at 62 FR 40472, July 29, 1997]

216.203–4–70 Additional clauses.

(a) *Price adjustment for basic steel, aluminum, brass, bronze, or copper mill products.*

(1) The price adjustment clause at 252.216–7000, Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products, may be used in fixed-price supply contracts for basic steel, aluminum, brass, bronze, or copper mill products, such as sheets, plates, and bars, when an established catalog or market price exists for the particular product being acquired.

(2) The 10 percent figure in paragraph (d)(1) of the clause shall not be exceeded unless approval is obtained at a level above the contracting officer.

(b) *Price adjustment for nonstandard steel items.* (1) The price adjustment clause at 252.216–7001, Economic Price Adjustment—Nonstandard Steel Items, may be used in fixed-price supply contracts when—

(i) The contractor is a steel producer and actually manufacture the standard steel mill item referred to in the ''base steel index'' definition of the clause; and

(ii) The items being acquired are nonstandard steel items made wholly or in part of standard steel mill items.

(2) When this clause is included in invitations for bids, omit Note 6 of the clause and all references to Note 6.

(3) Solicitations shall instruct offerors to complete all blanks in accordance with the applicable notes.

(4) When the clause is to provide for adjustment on a basis other than ''established price'' (see Note 6 of the clause), that price must be verified.

(5) The ten percent figure in paragraph (e)(4) of the clause shall not be exceeded unless approval is obtained at a level above the contracting officer.

(c) *Price adjustment for wage rates or material prices controlled by a foreign government.* (1) The price adjustment clause at 252.216–7003, Economic Price Adjustment—Wage Rates or Material Prices Controlled by a Foreign Government, may be used in fixed-price supply and service contracts when—

(i) The contract is to be performed wholly or in part in a foreign country; and

(ii) A foreign government controls wage rates or material prices and may, during contract performance, impose a mandatory change in wages or prices of material.

(2) Verify the base wage rates and material prices prior to contract award and prior to making any adjustment in the contract price.

[56 FR 36340, July 31, 1991, as amended at 62 FR 34122, June 24, 1997; 62 FR 40472, July 29, 1997]

Subpart 216.3—Cost-Reimbursement Contracts

216.301 General.

216.301–3 Limitations.

(c) The contracting officer executes the determination and findings.

216.306 Cost-plus-fixed-fee contracts.

(c) *Limitations.*

(i) Except as provided in paragraph (c)(ii) of this section, annual military construction appropriations acts prohibit the use of cost-plus-fixed-fee contracts that—

(A) Are funded by a military construction appropriations act;

(B) Are estimated to exceed $25,000; and

(C) Will be performed within the United States, except Alaska.

(ii) The prohibition in paragraph (c)(i) of this section does not apply—

(A) To contracts for environmental restoration at an installation that is being closed or realigned where payments are made from a Base Realignment and Closure Account; or

(B) To contracts specifically approved in writing, setting forth the reasons therefor, in accordance with the following:

(1) The Secretaries of the military departments are authorized to approve such contracts that are for environmental work only, provided the environmental work is not classified as construction, as defined by 10 U.S.C. 2801.

(2) The Secretary of Defense or designee must approve such contracts that are not for environmental work only or are for environmental work classified as construction.

[62 FR 1058, Jan. 8, 1997; 62 FR 1817, Jan. 13, 1997; 62 FR 49305, Sept. 19, 1997]

Subpart 216.4—Incentive Contracts

216.402 Application of predetermined, formula-type incentives.

216.402–2 Technical performance incentives.

Contractor performance incentives should relate to specific performance areas of milestones, such as delivery or test schedules, quality controls, maintenance requirements, and reliability standards.

216.403 Fixed-price incentive contracts.

(b) *Application*.

(3) Individual line items may have separate incentive provisions; e.g., when dissimilar work calls for separate formulas.

216.403–2 Fixed-price incentive (successive targets) contracts.

(a) *Description*. (1)(iii) The formula does not apply for the life of the contract. It is used to fix the firm target profit for the contract. To provide an incentive consistent with the circumstances, the formula should reflect the relative risk involved in establishing an incentive arrangement where cost and pricing information were not sufficient to permit the negotiation of firm targets at the outset.

216.403–70 Fixed-price contracts with award fees.

Award fee provisions may be used in fixed price contracts as provided in 216.470.

216.404 Cost-reimbursement incentive contracts.

216.404–1 Cost-plus-incentive-fee contracts.

(b) *Application*.

(3) Give appropriate weight to basic acquisition objectives in negotiating the range of fee and the fee adjustment formula. For example—

(A) In an initial product development contract, it may be appropriate to provide for relatively small adjustments in fee tied to the cost incentive feature, but provide for significant adjustments if the contractor meets or surpasses performance targets.

(B) In subsequent development and test contracts, it may be appropriate to negotiate an incentive formula tied primarily to the contractor's success in controlling costs.

216.404–2 Cost-plus-award-fee contracts.

(a) *Description*. (i) Normally, award fee is not earned when the fee-determining official has determined that contractor performance has been submarginal or unsatisfactory.

(ii) The basis for all award fee determinations shall be documented in the contract file.

(b) *Application*. (1) The cost-plus-award-fee (CPAF) contract is also suitable for level of effort contracts where mission feasibility is established but measurement of achievement must be by subjective evaluation rather than objective measurement. See Table 16–1, Performance Evaluation Criteria, for sample performance evaluation criteria and Table 16–2, Contractor Performance Evaluation Report, for a sample evaluation report.

(2) The contracting activity may—

(A) Establish a board to—

(*1*) Evaluate the contractor's performance; and

(*2*) Determine the amount of the award or recommend an amount to the contracting officer.

(B) Afford the contractor an opportunity to present information on its own behalf.

(c) *Limitations.* The CPAF contract shall not be used—

(i) To avoid—

(A) Establishing CPFF contracts when the criteria for CPFF contracts apply, or

(B) Developing objective targets so a CPIF contract can be used.

(ii) For either engineering development or operational system development acquisitions which have specifications suitable for simultaneous research and development and production, except a CPAF contract may be used for individual engineering development or operational system development acquisitions ancillary to the development of a major weapon system or equipment, where—

(A) It is more advantageous; and

(B) The purpose of the acquisition is clearly to determine or solve specific problems associated with the major weapon system or equipment.

(2)(A) Do not apply the weighted guidelines method to CPAF contracts for either the base (fixed) fee or the award fee.

(B) The base fee shall not exceed three percent of the estimated cost of the contract exclusive of the fee.

216.470 Other applications of award fees.

The ''award amount'' portion of the fee may be used in other types of contracts under the following conditions—

(1) The Government wishes to motivate and reward a contractor for management performance in areas which cannot be measured objectively and where normal incentive provisions cannot be used. For example, logistics support, quality, timeliness, ingenuity, and cost effectiveness are areas under the control of management which may be susceptible only to subjective measurement and evaluation.

(2) The ''base fee'' (fixed amount portion) is not used.

(3) The chief of the contracting office approves the use of the ''award amount.''

(4) An award review board and procedures are established for conduct of the evaluation.

(5) The administrative costs of evaluation do not exceed the expected benefits.

TABLE 16–1—PERFORMANCE EVALUATION CRITERIA

		Submarginal	Marginal	Good	Very good	Excellent
A—Time of Delivery.	(A–1) Adherence to plan schedule.	Consistently late on 20% of plans.	Late on 10% plans w/o prior agreement.	Occasional plan late w/o justification.	Meets plan schedule.	Delivers all plans on schedule & meets prod. change requirements on schedule.
	(A–2) Action on Anticipated delays.	Does not expose changes or resolve them as soon as recognized.	Exposes changes but is dilatory in resolution on plans.	Anticipates changes, advise Shipyard but misses completion of design plans 10%.	Keeps Yard posted on delays, resolves independently on plans.	Anticipates in good time, advises Shipyard, resolves independently and meets production schedule.
	(A–3) Plan Maintenance.	Does not complete interrelated systems studies concurrently.	System studies completed but constr. plan changes delayed.	Major work plans coordinated in time to meet production schedules.	Design changes from studies and interrelated plans issued in time to meet product schedules.	Design changes, studies resolved and test data issued ahead of production requirements.
B—Quality of Work.	(B–1) Work Appearance.	25% dwgs. not compatible with Shipyard repro. processes and use.	20% not compatible with Shipyard repro. processes and use.	10% not compatible with Shipyard repro. processes and use.	0% dwgs. prepared by Des. agent not compatible with Shipyard repro. processes and use.	0% dwgs. presented incl. Des. agent, vendors, subcontr. not compatible with Shipyard repro. processes and use.
	(B–2) Thoroughness and Accuracy of Work.	Is brief on plans tending to leave questionable situations for Shipyard to resolve.	Has followed guidance, type and standard dwgs.	Has followed guidance, type and standard dwgs. questioning and resolving doubtful areas.	Work complete with notes and thorough explanations for anticipated questionable areas.	Work of highest caliber incorporating all pertinent data required including related activities.

TABLE 16–1—PERFORMANCE EVALUATION CRITERIA—Continued

		Submarginal	Marginal	Good	Very good	Excellent
	(B–3) Engineering Competence.	Tendency to follow past practice with no variation to meet reqmts. job in hand.	Adequate engrg. to use & adapt existing designs to suit job on hand for routine work.	Engineered to satisfy specs., guidance plans and material provided.	Displays excellent knowledge of constr. reqmts. considering systems aspect, cost, shop capabilities and procurement problems.	Exceptional knowledge of Naval shipwork & adaptability to work process incorporating knowledge of future planning in Design.
	(B–4) Liaison Effectiveness.	Indifferent to requirements of associated activities, related systems, and Shipyard advice.	Satisfactory but dependent on Shipyard to force resolution of problems without constructive recommendations to subcontr. or vendors.	Maintains normal contact with associated activities depending on Shipyard for problems requiring military resolution.	Maintains independent contact with all associated activities, keeping them informed to produce compatible design with little assistance for Yard.	Maintains expert contact, keeping Yard informed, obtaining info from equip., supplies w/o prompting by Shipyard.
	(B–5) Independence and Initiative.	Constant surveillance req'd to keep job from slipping—assign to low priority to satisfy needs.	Requires occasional prodding to stay on schedule & expects Shipyard resolution of most problems.	Normal interest and desire to provide workable plans with average assistance & direction by Shipyard.	Complete & accurate job. Free of incompatibilities with little or no direction by Shipyard.	Develops complete and accurate plans, seeks out problem areas and resolves with assoc. act. ahead of schedule.
C—Effectiveness in Controlling and/or Reducing Costs.	(C–1) Utilization of Personnel.	Planning of work left to designers on drafting boards.	Supervision sets & reviews goals for designers.	System planning by supervisory, personnel, studies checked by engineers.	Design parameters established by system engineers & held in design plans.	Mods. to design plans limited to less than 5% as result lack engrg. system correlation.
	(C–2) Control Direct Charges (Except Labor).	Expenditures not controlled for services.	Expenditures reviewed occasionally by supervision.	Direct charges set & accounted for on each work package.	Provides services as part of normal design function w/o extra charges.	No cost overruns on original estimates absorbs service demands by Shipyard.
	(C–3) Performance to Cost Estimate.	Does not meet cost estimate for original work or changes 30% time.	Does not meet cost estimate for original work or changes 20% time.	Exceeds original est. on change orders 10% time and meets original design costs.	Exceeds original est. on change orders 5% time.	Never exceeds estimates of original package or change orders.

TABLE 16–2.—CONTRACTOR PERFORMANCE EVALUATION REPORT

Category	Criteria	Rating		Item factor		Evaluation rating		Category factor		Efficiency rating
A	TIME OF DELIVERY.									
	A–1 Adherence to Plan Schedule	_____	×	.40	=	_____				
	A–2 Action on Anticipated Delays	_____	×	.30	=	_____				
	A–3 Plan Maintenance	_____	×	.30	=	_____				
	Total Item Weighed Rating		....	.....	....	_____	×	.30	=	_____
B	QUALITY OF WORK.									
	B–1 Work Appearance	_____	×	.15	=	_____				
	B–2 Thoroughness and Accuracy of Work	_____	×	.30	=	_____				
	B–3 Engineering Competence	_____	×	.20	=	_____				
	B–4 Liaison Effectiveness	_____	×	.15	=	_____				
	B–5 Independence and Initiative	_____	×	.20	=	_____				
	Total Item Weighed Rating		....	.....	....	_____	×	.40	=	_____
C	EFFECTIVENESS IN CONTROLLING AND/OR REDUCING COSTS.									
	C–1 Utilization of Personnel	_____	×	.30	=	_____				
	C–2 Control of all Direct Charges Other than Labor	_____	×	.30	=	_____				
	C–3 Performance to Cost Estimate	_____	×	.40	=	_____				
	Total Item Weighed Rating		....	.....	....	_____	×	.30	=	_____
TOTAL WEIGHED RATING:										
Rated by:										
Signature(s): – –s0										

Ratings—Excellent; Very good; Good; Marginal; Submarginal;
Period of 19
Contract Number
Contractor
Date of Report
PNS Techical Monitor/s
Note: Provide supporting data and/or justification for below average or outstanding item ratings.

Subpart 216.5—Indefinite-Delivery Contracts

216.501 General.

(a)(i) For items with a shelf-life of less than 6 months, consider the use of indefinite delivery type contracts with orders to be placed either—

(A) Directly by the users; or

(B) By central purchasing offices with deliveries direct to users.

(ii) Whenever an indefinite delivery contract is issued, the issuing office must furnish all ordering offices sufficient information for the ordering office to complete its contract reporting responsibilities under 204.670–2. This data must be furnished to the ordering activity in sufficient time for the activity to prepare its report for the action within 3 working days of the order.

[56 FR 36340, July 31, 1991, as amended at 57 FR 42630, Sept. 15, 1992]

216.505 Contract clauses.

(d) If the contract is for the preparation of personal property for shipment or storage (see 247.271–4), substitute paragraph (f) at 252.247–7015, Requirements, for paragraph (f) of the clause at FAR 52.216–21, Requirements.

216.506 Ordering.

Orders placed under indefinite delivery contracts may be issued on DD Form 1155, Order for Supplies or Services.

Subpart 216.6—Time-And-Materials, Labor-Hour, and Letter Contracts

216.603 Letter contracts.

216.603–3 Limitations.

See subpart 217.74 for additional limitations on the use of letter contracts.

216.603–4 Contract clauses.

(b)(2) See 217.7406(a) for additional guidance regarding use of the clause at FAR 52.216–24, Limitation of Government Liability.

(3) Use the clause at 252.217–7027, Contract Definitization, in accordance with its prescription at 217.7406(b), instead of the clause at FAR 52.216–25, Contract Definitization.

[61 FR 7743, Feb. 29, 1996]

Subpart 216.7—Agreements

216.703 Basic ordering agreements.

(c) *Limitations.* The period during which orders may be placed against a basic ordering agreement may not exceed three years. The contracting officer, with the approval of the chief of the contracting office, may grant extensions for up to two years. No single extension shall exceed one year. See subpart 217.74 for additional limitations on the use of undefinitized orders under basic ordering agreements.

(d) *Orders.* (i) The contracting officer issuing an order under a basic ordering agreement shall be responsible for ensuring compliance with the provisions and limitations of this section.

(ii) Individual orders under a basic ordering agreement shall be individually closed following completion of the orders (see FAR 4.804).

(1)(iii) The office issuing the agreement shall furnish all authorized ordering offices sufficient information for the ordering office to complete its contract reporting responsibilities under 204.670–2 or, in the case of civilian agencies, the Federal Procurement Data System reporting requirement. Data furnished to civilian agencies must contain uncoded information about the data elements and the meanings of the codes to permit these users to translate the data into the federal format. This data must be furnished to the ordering activity in sufficient time for the activity to prepare its report for the action within 3 working days of the order.

(2)(i) Any activity listed in the agreement may issue orders on DD Form 1155, Order for Supplies or Services, or Standard Form 26, Award/Contract.

(3) Incentive provisions consistent with this part are permitted.

[56 FR 36340, July 31, 1991, as amended at 61 FR 7743, Feb. 29, 1996; 61 FR 18195, Apr. 24, 1996]

PART 217—SPECIAL CONTRACTING METHODS

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217.7701 Procedures.
217.7702 Contract clause.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36345, July 31, 1991, unless otherwise noted.

Subpart 217.1—Multiyear Contracting

217.102 Policy.

217.102–2 General.

(b) The applicable program year is that shown in the DoD Future Years Defense Program.

217.102–3 Objectives.

(d)(3) For additional restrictions on inclusion of recurring costs in the cancellation ceiling in DoD multiyear contracts, see 217.103–1(a)(iii) and the DoD Budget Guidance Manual (DoD 7110.1–M).

[57 FR 53599, Nov. 12, 1992]

217.103 Procedures.

217.103–1 General.

(a) *Criteria.* 10 U.S.C. 2306(h) and annual DoD authorization and appropriations acts have established the following additional criteria:

(i) The use of such a contract will promote the national security of the United States (10 U.S.C. 2306(h)(1)).

(ii) The contract provides for a production rate at not less than minimum economic production rates given the existing tooling and facilities (10 U.S.C. 2306(h)(9));

(iii) Any advance economic order quantity acquisition (see FAR 17.101) is funded at least to the limits of the Government's liability. Recurring costs for such economic order quantities shall not be included in the unfunded cancellation ceiling. (Section 9021, Pub. L. 101–165 and similar sections in subsequent Defense appropriations acts).

(b) *Limitations.*

(i) *Public Law 90–378 (10 U.S.C. 2306(g)).*

(A) DoD may enter into multiyear acquisitions for the following services (and items of supply relating to such services), even though funds are limited by statute to obligation during the fiscal year in which the contract is executed:

(*1*) Operation, maintenance, and support of facilities and installations;

(*2*) Maintenance or modification of aircraft, ships, vehicles, and other highly complex military equipment;

(*3*) Specialized training requiring high quality instructor skills (e.g., training for pilots and other aircrew members or foreign language training); and

(*4*) Base services (e.g., ground maintenance, in-plane refueling, bus transportation, and refuse collection and disposal).

(B) This authority may be used as long as the contract—

(*1*) Does not extend beyond five years;

(*2*) Complies with FAR 17.101 through 17.105; and

(*3*) Performance years do not extend beyond the end of any fiscal year.

(ii) *Public Law 97–214 (10 U.S.C. 2829).*

(A) DoD may enter into multiyear contracts for supplies and services required for management, maintenance, and operation of military family housing and may pay the costs of such contracts for each year out of annual appropriations for that year.

(B) This authority may be used as long as the contract—

(*1*) Does not extend beyond four years;

(*2*) Complies with FAR 17.101 through 17.105; and

(*3*) Performance years do not extend beyond the end of any fiscal year.

(iii) Award of a multiyear contract for services requires a written determination by the head of the contracting activity (10 U.S.C. 2306(g)(1)) that—

(A) There will be a continuing need for the services and incidental supplies;

(B) Furnishing the services and incidental supplies will require—

(*1*) A substantial initial investment in plant or equipment;

(*2*) The upfront commitment of substantial financial resources for the assembly, training or transportation of a specialized work force; or

(*3*) Other substantial startup costs; and

(C) Using a multiyear contract will be in the best interest of the United States by encouraging effective competition and promoting economical business operations.

(iv) The appropriate Secretary must provide a 30-day advance notification to the Committees on Appropriations and Armed Services of the House of Representatives and the Senate before the award of any—

(A) Multiyear contract that contains a cancellation ceiling in excess of $100 million (10 U.S.C. 2306(h)(3));

(B) Multiyear contract that provides for economic order quantity purchases in excess of $20 million in any year (Section 9021, Pub. L. 101–165 and similar sections in subsequent appropriations acts);

(C) Multiyear contract that includes an unfunded contingent liability in excess of $20 million (Section 9021, Pub. L. 101–165 and similar sections in subsequent appropriations acts); or

(D) Contract for advance procurement leading to a multiyear contract with an economic order quantity procurement in excess of $20 million in any year (Section 9021, Pub. L. 101–165 and similar sections in subsequent appropriations acts).

(v) Departments/agencies shall establish reporting procedures to meet the requirements of paragraph (b)(iv) of this subsection. Submit copies of the notifications to the Under Secretary of Defense (Acquisition & Technology), Director of Defense Procurement (USD(A&T)DP) and the Under Secretary of Defense (Comptroller) (Program/Budget) (USD(C)(P/B)).

(vi) Do not initiate a multiyear contract—

(A) In excess of $500 million for any system or component thereof unless—

(*1*) Specifically provided for in a Defense appropriations act (section 9021, Pub. L. 101–165 and similar sections in subsequent appropriations acts); and

(*2*) The Secretary of Defense certifies to Congress that the current Future Years Defense Program fully funds the support costs associated with the multiyear program. Forward documentation to support this certification to the Under Secretary of Defense (Acquisition & Technology), Director of Defense Procurement.

(B) Without using present value analysis to determine the lowest cost to the Government of a multiyear contract compared to annual contracts (Section 9021, Pub. L. 101–165 and similar sections in subsequent appropriations acts).

(vii) Do not terminate a multiyear contract under a program approved by Congress without providing a ten-day advance notification to the Committees on Appropriations and Armed Services of the House of Representatives and the Senate (Section 9021, Pub. L. 101–165 and similar sections in subsequent appropriations acts).

(viii) The Secretary of Defense may ask Congress for relief from any conditions established by law for that particular procurement program (10 U.S.C. 2306(h)(11)).

(A) A request for relief from the requirement to achieve specific cost savings may be made if it appears, after negotiations with the contractors, that such savings cannot be achieved, but that substantial savings could nevertheless be achieved by using a multiyear contract.

(B) Include in such request details concerning the reasons for requesting use of a multiyear contract as well as details about the negotiated contract terms and conditions.

(C) Forward supporting documentation to the Under Secretary of Defense (Acquisition & Technology), Director of Defense Procurement.

(ix) Departments/agencies also must comply with any other restrictions or notification requirements contained in annual authorization or appropriation acts.

(d) *Cancellation*. State cancellation ceilings in the schedule as a not-to-exceed amount.

[56 FR 36345, July 31, 1991, as amended at 57 FR 14992, Apr. 23, 1992; 58 FR 28465, May 13, 1993; 60 FR 61596, Nov. 30, 1995]

Subpart 217.2—Options

217.202 Use of options.

(1) Options may be used for foreign military sales requirements.

(2) Consider use of surge options to support the Industrial Preparedness Production Planning program (see subpart 208.72). A surge option allows the Government, prior to final delivery, to—

(i) Accelerate the contractor's production rate in accordance with a surge production plan or a delivery schedule

provided by the contractor under the terms of the contract; and

(ii) Purchase additional quantities of supplies or services.

(3) See subpart 217.74 for limitations on the use of undefinitized options.

[56 FR 36345, July 31, 1991, as amended at 61 FR 7743, Feb. 29, 1996]

217.208 Solicitation provisions and contract clauses.

Sealed bid solicitations shall not include provisions for evaluations of options unless the contracting officer determines that there is a reasonable likelihood that the options will be exercised (10 U.S.C. 2301(a)(7)). This limitation also applies to sealed bid solicitations for the contracts excluded by FAR 17.200.

217.208–70 Additional clauses.

(a) Use the clause at 252.217–7000, Exercise of Option to Fulfill Foreign Military Sales Commitments, when an option may be used for foreign military sale requirements.

(1) Use Alternate I when the foreign military sale country is not known at the time of solicitation or award.

(2) Do not use this clause in contracts for establishment or replenishment of DoD inventories or stocks, or acquisitions made under DoD cooperative logistics support arrangements.

(b) When a surge option is needed in support of industrial preparedness production planning (see subpart 208.72), use the clause at 252.217–7001, Surge Option, in solicitations and contracts.

(1) Insert the percentage of increase the option represents in paragraph (a) of the clause.

(2) Change 30 days in paragraphs (b)(2) and (d)(1) to longer periods, if appropriate.

(3) Change the 24-month period in paragraph (c)(3), if appropriate.

Subpart 217.4—Leader Company Contracting

217.401 General.

When leader company contracting is to be considered, take special effort to select a small disadvantaged business (SDB) concern as the follower company. Where other than an SDB is selected as the follower company, the contracting officer shall document the contract file to reflect—

(1) The extent of actions taken to identify SDB concerns for participation in the acquisition; and

(2) The rationale for selection of a non-SDB as the follower company.

Subpart 217.5—Interagency Acquisitions Under the Economy Act

217.500 Scope of subpart.

Acquisitions from required sources, as described in FAR part 8, are not orders under the Economy Act.

[59 FR 22760, May 3, 1994]

217.502 General.

If requested, the contracting officer who normally would contract for the requesting activity should advise in the determination process.

[59 FR 22760, May 3, 1994]

217.504 Ordering procedures.

(b) Do not send invitations for bids or requests for proposals to other Government agencies.

Subpart 217.6—Management and Operating Contracts

217.600 Scope of subpart.

FAR subpart 17.6 does not apply to DoD.

Subpart 217.70—Exchange of Personal Property

217.7000 Scope of subpart.

This subpart prescribes policy and procedures for exchange of nonexcess personal property concurrent with an acquisition. Section 201(c) of the Federal Property and Administrative Services Act of 1949, 63 Stat. 384, as amended (40 U.S.C. 481(c)) permits exchange of personal property and application of the exchange allowance to the acquisition of similar property. This subpart does not authorize the sale of nonexcess personal property.

217.7001 Definitions.

As used in this subpart,

(a) *Exchange (trade-in) property* means property which—

(1) Is not excess but is eligible for replacement (because of obsolescence, unserviceability, or other reason); and

(2) Is applied as whole or partial payment toward the acquisition of similar items (i.e., items designed and constructed for the same purpose).

(b) *Property* means items which fall within one of the generic categories listed in DoDI 4140.51, Exchange of Nonexcess Personal Property in the Department of Defense.

217.7002 Policy.

DoD policy is to exchange, rather than replace, eligible nonexcess property whenever exchange promotes economical and efficient program accomplishment. Exchange policy, authority, and applicability are governed by—

(a) The Federal Property Management Regulations issued by the Administrator of the General Services Administration; and

(b) DoDI 4140.51, Exchange of Nonexcess Personal Property in the Department of Defense.

217.7003 Purchase request.

Ensure that the requiring activity provides all of the following in support of the purchase request—

(a) A certification that the property is eligible for exchange and complies with all conditions and limitations of DoDI 4140.51;

(b) A written determination of economic advantage indicating—

(1) The anticipated economic advantage to the Government from use of the exchange authority;

(2) That exchange allowances shall be applied toward, or in partial payment of, the items to be acquired; and

(3) That, if required, the exchange property has been rendered safe or innocuous or has been demilitarized;

(c) All applicable approvals for the exchange; and

(d) A description of the property available for exchange (e.g., nomenclature, location, serial number, estimated travel value).

217.7004 Solicitation and award.

(a) Solicitations shall include a request for offerors to state prices—

(1) For the new items being acquired without any exchange; and

(2) For the new items with the exchange (trade-in allowance) for the exchange property listed.

(b) The contracting officer is not obligated to award on an exchange basis. If the lowest evaluated offer is an offer for the new items without any exchange, the contracting officer may award on that basis and forgo the exchange.

(c) Exchanges may be made only with the successful offeror. When the successful offer includes an exchange, award one contract for both the acquisition of the new property and the trade-in of the exchange property. The only exception is when the items must be acquired against a mandatory Federal supply schedule contract, in which case, award a separate contract for the exchange.

217.7005 Solicitation provision.

Use the provision at 252.217–7002, Offering Property for Exchange, when offering nonexcess personal property for exchange. Allow a minimum of 14 calendar days for the inspection period in paragraph (b) of the clause if the exchange property is in the continental United States. Allow at least 21 calendar days outside the United States.

Subpart 217.71—Master Agreement for Repair and Alteration of Vessels

217.7100 Scope of subpart.

This subpart contains acquisition policies and procedures for master agreements for repair and alteration of vessels.

217.7101 Definitions.

(a) *Master agreement for repair and alteration of vessels*—

(1) Is a written instrument of understanding, negotiated between a contracting activity and a contractor that—

(A) Contains contract clauses, terms, and conditions applying to future contracts for repairs, alterations, and/or additions to vessels; and

(B) Contemplates separate future contracts that will incorporate by reference or attachment the required and applicable clauses agreed upon in the master agreement.

(2) Is not a contract.

(b) *Job order*—

(1) Is a fixed price contract incorporating, by reference or attachment, a master agreement for repair and alteration of vessels;

(2) May include clauses pertaining to subjects not covered by the master agreement; but applicable to the job order being awarded; and

(3) Applies to a specific acquisition and sets forth the scope of work, price, delivery date, and other appropriate terms that apply to the particular job order.

217.7102 General.

(a) Activities shall enter into master agreements for repair and alteration of vessels with all prospective contractors located within the United States, its possessions, or Puerto Rico, which—

(1) Request ship repair work; and

(2) Which possess the organization and facilities to perform the work satisfactorily. (Issuance of a master agreement does not indicate approval of the contractor's facility for any particular acquisition and is not an affirmative determination of responsibility under FAR subpart 9.1 for any particular acquisition.)

(b) Activities may use master agreements in work with prospective contractors located outside the United States, its possessions, or Puerto Rico.

(c) Activities may issue job orders under master agreements to effect repairs, alterations, and/or additions to vessels belonging to foreign governments.

(1) Contractors shall treat vessels of a foreign government as if they were vessels of the U.S. Government whenever requested to do so by the contracting officer.

(2) Identify the vessel and the foreign government in the solicitation and job order.

217.7103 Procedures.

217.7103–1 Content and format.

(a) A Master agreement shall contain all clauses required by 217.7104(a), statute and executive order.

(b) The following format may be adapted to fit specific circumstances:

MASTER AGREEMENT FOR REPAIR AND ALTERATION OF VESSELS

(1) This agreement is entered into this _____ day of _____ 19___, by the United States of America (the ''Government'':) represented by _____, the Contracting Officer, and, _____ a corporation organized and existing under the laws of the State of _____ (the ''Contractor'').

(2) The clauses in this agreement, shall be incorporated, by reference or attachment, in job orders issued under this agreement to effect repairs, alterations, and/or additions to vessels.

(3) By giving 30 days written notice, either party to this agreement has the right to cancel it without affecting the rights and liabilities under any job order existing at the time of cancellation. The Contractor shall perform, under the terms of this agreement, all work covered by any job order awarded before the effective date of the cancellation.

(4) This agreement may be modified only by mutual agreement of the parties. A modification of this agreement shall not affect any job order in existence at the time of modification, unless the parties agree otherwise.

(5) The rights and obligations of the parties to this agreement are set forth in this agreement and the clauses of any job orders issued under this agreement. In the event there is an inconsistency between this agreement and any job order, the provisions of this agreement shall govern.

(6) This agreement shall remain in effect until canceled by either party.

THE UNITED STATES OF AMERICA

by _____

(Contracting Officer)

_____

(Contractor)

by _____

(Authorized Individual)

_____

(Title)

217.7103–2 Period of agreement.

(a) Master agreements remain in effect until canceled by either the contractor or the contracting officer.

(b) Master agreements can be canceled by either the contractor or the

contracting officer by giving 30 days written notice to the other.

(c) Cancellation of a master agreement does not affect the rights and liabilities under any job order existing at the time of cancellation. The contractor must continue to perform all work covered by any job order issued before the effective date of cancellation of the master agreement.

217.7103–3 Solicitations for job orders.

(a) When a requirement arises within the United States, its possessions, or Puerto Rico for the type of work covered by the master agreement, solicit offers from prospective contractors that—

(1) Previously executed a master agreement; or

(2) Have not previously executed a master agreement, but possess the necessary qualifications to perform the work and agree to execute a master agreement before award of a job order.

(b) Prepare the solicitation in the uniform contract format and in accordance with FAR subparts 14.2 or 15.4, as applicable.

(c) Include in the solicitation—

(1) The nature of the work to be performed;

(2) The date the vessel will be available to the contractor;

(3) The date the work is to be completed; and

(4) Whether bulk ammunition is aboard the vessel.

(d) Unless the solicitation states otherwise, offers are to be based on performance at the contractor's site.

(e) Solicitations processed under negotiated acquisition procedures shall require offerors to include a breakdown of the price with reasonable supporting detail in whatever format and detail the contracting officer may request.

(f) Where practicable, afford potential offerors an opportunity to inspect the item needing repair or alteration.

217.7103–4 Award of a job order.

Award job orders in accordance with FAR subparts 14.4 or 15.10.

217.7103–5 Emergency work.

(a) The contracting officer, without soliciting offers, may issue a written job order to a contractor that has previously executed a master agreement when—

(i) Delay in the performance of necessary repair work would endanger a vessel, its cargo or stores; or

(ii) Military necessity requires immediate work on a vessel.

(b) Process this type of undefinitized contract action in accordance with subpart 217.74.

(c) Negotiate a price as soon as practicable after the issuance of an undefinitized order and definitize the job order upon completing negotiations.

217.7103–6 Repair costs not readily ascertainable.

If the nature of any repairs is such that their extent and probable cost cannot be ascertained readily, the solicitation should—

(a) Solicit offers for determining the nature and extent of the repairs;

(b) Provide that upon determination by the contracting officer of what work is necessary, the contractor, if requested by the contracting officer, shall negotiate prices for performance of the repairs; and

(c) Provide that prices for the repairs, if ordered, will be set forth in a modification of the job order.

217.7103–7 Modification of master agreements.

(a) Review each master agreement at least annually before the anniversary of its effective date and revise it as necessary to conform to the requirements of the FAR and DFARS. Statutory or other mandatory changes may require review and revision earlier than one year.

(b) A master agreement shall be changed only by modifying the master agreement itself. It shall not be changed through a job order.

(c) A modification to a master agreement shall not affect job orders issued before the effective date of the modification.

217.7104 Contract clauses.

(a) Use the following clauses in solicitations for, and in, master agreements for repair and alteration of vessels:

(1) 252.217–7003, Changes.

(2) 252.217–7004, Job Orders and Compensation.

(3) 252.217–7005, Inspection and Manner of Doing Work.

(4) 252.217–7006, Title.

(5) 252.217–7007, Payments.

(6) 252.217–7008, Bonds.

(7) 252.217–7009, Default.

(8) 252.217–7010, Performance.

(9) 252.217–7011, Access to Vessel.

(10) 252.217–7012, Liability and Insurance.

(11) 252.217–7013, Guarantees.

(12) 252.217–7014, Discharge of Liens.

(13) 252.217–7015, Safety and Health.

(14) 252.217–7016, Plant Protection, as applicable.

(b)(1) Incorporate in solicitations for, and in, job orders, the clauses in the master agreement, and any other clauses on subjects not covered by the master agreement, but applicable to the job order to be awarded.

(2) Use the clause at 252.217–7016, Plant Protection, in job orders where performance is to occur at the contractor's facility.

Subpart 217.72—Bakery and Dairy Products

217.7200 Scope.

This subpart provides special policies and requirements for acquisition of perishable bakery and dairy products.

217.7201 Contract requirements for dairy products.

(a) Include the following chemical and microbiological requirements in solicitations and resulting contracts for milk, milk products, and cultured products (as defined in the Veterinary/Medical Wholesomeness Assurance Program for Fresh and Cultured Dairy Products and Frozen Desserts (AR–40–70/NAVSUPINST 4355.6/AFR 161–46/MCO 10110.44)):

(1) *Chemical requirements.* Products shall meet the chemical requirements for each specification cited in the contract on the date of award.

(2) *Microbiological requirements.* Products shall meet microbiological requirements stated in Public Health Service Publication 229, Grade A Pasteurized Milk Ordnance, in effect on the date of award. In the event of conflict between these requirements and individual product specifications, the requirements of Public Health Service Publication 229 take precedence.

(b) When the contractor is required to furnish its own cabinets for dispensing milk from bulk containers—

(1) Include the following information in the solicitation—

(i) The number (or estimated number) of dispenser cabinets required;

(ii) Whether metal stands for the cabinets are required;

(iii) The number of cabinets required with a capacity of two containers each; and

(iv) The number required with a capacity of three containers each.

(2) Include the contractor's list of cabinet equipment in the schedule of the contract.

(c) The contracting officer shall notify the Government quality assurance representative of code changes approved under the clause at 252.217–7022, Code Dating.

217.7202 Contract type.

Normally use requirements contracts for bakery and dairy products. Other indefinite delivery contracts and other contract types may be used as appropriate.

217.7203 Contract clauses.

(a) Use the following additional clauses in solicitations and contracts for perishable bakery and dairy products—

(1) 252.217–7017, Time of Delivery. Use Alternate I when the contract is other than a requirements contract. Insert the number of hours in paragraph (c) of Alternate I.

(2) 252.217–7018, Change in Plant Location.

(3) 252.217–7019, Sanitary Conditions. Use Alternate I when the contract is other than a requirements contract.

(4) 252.217–7022, Code Dating. Use this clause only when the schedule or a specification requires labels showing the date of pasteurization, manufacture, production, or processing.

(5) 252.217–7023, Marking. Do not use this clause when MIL–STD–129, Marking for Shipment and Storage, is required.

(6) 252.217–7024, Responsibility for Containers and Equipment. Use when

contractor is required to provide reusable containers and equipment.

(b) Use the following additional clauses in solicitations and contracts for perishable dairy products—

(1) 252.217–7020, Examination and Testing. Use Alternate I when the contract is an indefinite quantity contract.

(2) 252.217–7021, Deficiency Adjustment.

(3) 252.217–7025, Containers and Equipment.

Subpart 217.73—Identification of Sources of Supply

217.7300 Scope.

This subpart implements 10 U.S.C. 2384. It contains policy and procedures for requiring contractors to identify the actual manufacturer of supplies furnished to DoD.

217.7301 Policy.

Contractors shall identify their sources of supply in contracts for supplies. Contractor identification of sources of supply enables solicitation, in subsequent acquisitions, of actual manufacturers or other suppliers of items. This enhances competition and potentially avoids payment of additional costs for no significant added value.

217.7302 Procedures.

(a) Whenever practicable, include a requirement for contractor identification of sources of supply in all contracts for the delivery of supplies. The identification shall include—

(1) The item's actual manufacturer or producer, or all the contractor's sources for the item;

(2) The item's national stock number (if there is one);

(3) The item identification number used by—

(i) The actual manufacturer or producer of the item; or

(ii) Each of the contractor's sources for the item; and

(4) The source of any technical data delivered under the contract.

(b) The requirement in paragraph (a) of this section does not apply to commercial items.

[56 FR 36345, July 31, 1991, as amended at 60 FR 61596, Nov. 30, 1995]

217.7303 Solicitation provision.

(a) Use the provision at 252.217–7026, Identification of Sources of Supply, or one substantially the same, in all solicitations for supplies when the acquisition is being conducted under other than full and open competition, except when—

(1) Using FAR 6.302–5;

(2) The contracting officer already has the information required by the provision (e.g., the information was obtained under other acquisitions);

(3) The contract is for subsistence, clothing or textiles, fuels, or supplies purchased and used outside the United States;

(4) The contracting officer determines that it would not be practicable to require offerors/contractors to provide the information, e.g., nonrepetitive local purchases; or

(5) The contracting officer determines that the exception at 217.7302(b) applies to all items under the solicitation.

(b) If appropriate, use the provision at 252.217–7026, Identification of Sources of Supply, or one substantially the same, in service contracts requiring the delivery of supplies.

Subpart 217.74—Undefinitized Contract Actions

217.7400 Scope.

This subpart prescribes policies and procedures implementing 10 U.S.C. 2326.

217.7401 Definitions.

As used in this subpart—

(a) *Contract action* means an action which results in a contract.

(1) It includes contract modifications for additional supplies or services.

(2) It does not include change orders, administrative changes, funding modifications, or any other contract modifications that are within the scope and under the terms of the contract, e.g., engineering change proposals, value

engineering change proposals, and over and above work requests as described in subpart 217.77.

(b) *Definitization* means the agreement on, or determination of, contract terms, specifications, and price, which converts the undefinitized contract action to a definitive contract.

(c) *Qualifying proposal* means a proposal containing sufficient information for the DoD to do complete and meaningful analyses and audits of the—

(1) Information in the proposal; and

(2) Any other information that the contracting officer has determined DoD needs to review in connection with the contract.

(d) *Undefinitized contract action* means any contract action for which the contract terms, specifications, or price are not agreed upon before performance is begun under the action. Examples are letter contracts, orders under basic ordering agreements, and provisioned item orders, for which the price has not been agreed upon before performance has begun.

217.7402 Exceptions.

The following undefinitized contract actions (UCAs) are not subject to this subpart, but the contracting officer should apply the policy to them (and to changes under the Changes clause) to the maximum extent practicable—

(a) UCAs for foreign military sales;

(b) Purchases at or below the simplified acquisition threshold;

(c) Special access programs;

(d) Congressionally mandated long-lead procurement contracts.

[56 FR 36345, July 31, 1991, as amended at 61 FR 7743, Feb. 29, 1996]

217.7403 Policy.

DoD policy is that undefinitized contract actions shall—

(a) Be used only when—

(1) The negotiation of a definitive contract action is not possible in sufficient time to meet the Government's requirements; and

(2) The Government's interest demands that the contractor be given a binding commitment so that contract performance can begin immediately.

(b) Be as complete and definite as practicable under the particular circumstances.

217.7404 Limitations.

217.7404–1 Authorization.

The contracting officer shall obtain approval from the head of the contracting activity before—

(a) Entering into a UCA. The request for approval must fully explain the need to begin performance before definitization, including the adverse impact on agency requirements resulting from delays in beginning performance.

(b) Including requirements for non-urgent spare parts and support equipment in a UCA. The request should show that inclusion of the non-urgent items is consistent with good business practices and in the best interest of the United States.

(c) Modifying the scope of a UCA when performance has already begun. The request should show that the modification is consistent with good business practices and in the best interests of the United States.

217.7404–2 Price ceiling.

UCAs shall include a not-to-exceed price.

217.7404–3 Definitization schedule.

(a) UCAs shall contain definitization schedules which provide for definitization by the earlier of the following dates—

(1) The date which is 180 days after issuance of the action (this date may be extended but may not exceed the date which is 180 days after the contractor submits a qualifying proposal); or

(2) The date on which the amount of funds obligated under the contract action is equal to more than 50 percent of the not-to-exceed price.

(b) Submission of a qualifying proposal in accordance with the definitization schedule is a material element of the contract. If the contractor does not submit a timely qualifying proposal, the contracting officer may suspend or reduce progress payments under FAR 32.503–6, or take other appropriate action.

[56 FR 36345, July 31, 1991, as amended at 60 FR 29498, June 5, 1995; 61 FR 7743, Feb. 29, 1996]

217.7404–4 Limitations on obligations.

The Government shall not obligate more than 50 percent of the not-to-exceed price before definitization. However, if a contractor submits a qualifying proposal before 50 percent of the not-to-exceed price has been obligated by the Government, then the limitation on obligations before definitization may be increased to no more than 75 percent (see 232.102–70 for coverage on provisional delivery payments).

[60 FR 29498, June 5, 1995]

217.7404–5 Exceptions.

(a) The limitations in 217.7404–2, 217.7404–3, and 217.7404–4 do not apply to UCAs for the purchase of initial spares.

(b) The head of an agency may waive the limitations in 217.7404–2, 217.7404–3, and 217.7404–4 for UCAs if the head of the agency determines that the waiver is necessary to support a contingency operation.

[60 FR 29498, June 5, 1995]

217.7404–6 Allowable profit.

When the final price of a UCA is negotiated after a substantial portion of the required performance has been completed, the head of the agency shall ensure the profit allowed reflects—

(a) Any reduced cost risk to the contractor for costs incurred during contract performance before negotiation of the final price; and

(b) The contractor's reduced cost risk for costs incurred during performance of the remainder of the contract.

217.7405 Definitizations.

For each definitization modification, the contracting officer shall include all data required by 243.171.

[60 FR 34470, July 3, 1995]

217.7406 Contract clauses.

(a) Use the clause at FAR 52.216–24, Limitation of Government Liability, in all UCAs, solicitations associated with UCAs, basic ordering agreements, indefinite delivery contracts, and any other type of contract providing for the use of UCAs.

(b) Use the clause at 252.217–7027, Contract Definitization, in all UCAs, solicitations associated with UCAs, basic ordering agreements, indefinite delivery contracts, and any other type of contract providing for the use of UCAs. Insert the applicable information in paragraphs (a), (b), and (d) of the clause. If, at the time of entering into the UCA, the contracting officer knows that the definitive contract action will meet the criteria of FAR 15.804–1 for not requiring submission of cost or pricing data, the words ''and cost or pricing data'' may be deleted from paragraph (a) of the clause.

[61 FR 7743, Feb. 29, 1996]

Subpart 217.75—Acquisition of Replenishment Parts

217.7500 Scope of subpart.

This subpart provides guidance on additional requirements related to acquisition of replenishment parts (as defined in appendix E).

217.7501 General.

Departments and agencies—

(a) May acquire replenishment parts concurrently with production of the end item.

(b) Shall provide for full and open competition when fully adequate drawings and any other needed data are available with the right to use for acquisition purposes (see part 227). However—

(1) When data is not available for a competitive acquisition, use one of the procedures in 217.7503.

(2) Replenishment parts must be acquired so as to ensure the safe, dependable, and effective operation of the equipment. Where this assurance is not possible with new sources, competition may be limited to the original manufacturer of the equipment or other sources that have previously manufactured or furnished the parts as long as the action is justified.

(c) Shall follow the limitations on price increases in 217.7504.

217.7502 Spares acquisition integrated with production (SAIP).

(a) Spares acquisition integrated with production (SAIP) is a technique used to acquire replenishment parts

concurrently with parts being produced for the end item.

(b) DoD acquisition managers select parts for SAIP under the criteria in DoDI 4245.12, Spares Acquisition Integrated With Production (SAIP).

(c) Include appropriately tailored provisions in the contract when SAIP is used.

217.7503 Acquisition of parts when data is not available.

When acquiring a part for which the Government does not have necessary data with rights to use in a specification or drawing for competitive acquisition, use one of the following procedures in order of preference—

(a) When items of identical design are not required, the acquisition may still be conducted through full and open competition by using a performance specification or other similar technical requirement or purchase description that does not contain data with restricted rights. Two methods are—

(1) Two-step sealed bidding; and

(2) Brand name or equal purchase descriptions.

(b) When other than full and open competition is authorized under FAR part 6, acquire the part from the firm which developed or designed the item or process, or its licensees, provided productive capacity and quality are adequate and the price is fair and reasonable.

(c) When additional sources are needed and the procedures in paragraph (a) of this section are not practicable, consider the following alternatives—

(1) Encourage the developer to license others to manufacture the parts;

(2) Acquire the necessary rights in data;

(3) Use a leader company acquisition technique (FAR subpart 17.4) when complex technical equipment is involved and establishing satisfactory additional sources will require technical assistance as well as data; or

(4) Incorporate a priced option in the contract which allows the Government to require the contractor to establish a second source.

(d) As a last alternative, the contracting activity may develop a design specification for competitive acquisition through reverse engineering. Contracting activities shall not do reverse engineering unless—

(1) Significant cost savings can be demonstrated; and

(2) The action is authorized by the head of the contracting activity.

217.7504 Limitations on price increases.

This section provides implementing guidance for section 1215 of Public Law 98–94 (10 U.S.C. 2452 note).

(a) The contracting officer shall not award, on a sole source basis, a contract for any centrally managed replenishment part when the price of the part has increased by 25 percent or more over the most recent 12-month period.

(1) Before computing the percentage difference between the current price and the prior price, adjust for quantity, escalation, and other factors necessary to achieve comparability.

(2) Departments and agencies may specify an alternate percentage or percentages for contracts within the small purchase limitation in FAR part 13.

(b) The contracting officer may award a contract for a part, the price of which exceeds the limitation in paragraph (a) of this section, if the contracting officer certifies in writing to the head of the contracting activity before award that—

(1) The contracting officer has evaluated the price of the part and concluded that the price increase is fair and reasonable; or

(2) The national security interests of the United States require purchase of the part despite the price increase.

(c) The fact that a particular price has not exceeded the limitation in paragraph (a) of this section does not relieve the contracting officer of the responsibility for obtaining a fair and reasonable price.

(d) Contracting officers may include a provision in sole source solicitations requiring that the offeror supply with its proposal, price and quantity data on any government orders for the replenishment part issued within the most recent 12 months.

Subpart 217.76—Contracts with Provisioning Requirements

217.7600 Scope of subpart.

This subpart contains contract requirements and procedures for items to be provisioned. For technical requirements of provisioning, see DoDD 4140.40, Provisioning of End Items of Material. For breakout requirements, see appendix E.

217.7601 Definitions.

As used in this subpart,

(a) *Provisioning* means the process of determining and acquiring the range and quantity of spare and repair parts, and support and test equipment required to operate and maintain an end item for an initial period of service.

(b) *Provisioned item* means any item selected under provisioning procedures.

(c) *Provisioned items order* (PIO) means an undefinitized order issued under a contract which includes the Government's requirements for provisioned items. (Provisioned items with firm prices are acquired by supplemental agreement or by separate contract.)

(d) *Provisioning activity* means the organization responsible for selecting and determining requirements for provisioned items.

(e) *Provisioning requirements statement* means the contractual document listing the specific provisioning requirements for that contract. The statement normally includes:

(1) Instructions, such as the provisioning method to be used;

(2) The extent of provisioning technical documentation and data needed (including administrative requirements for submission and distribution);

(3) The type and location of provisioning conferences;

(4) Sample article requirements;

(5) The delivery schedule;

(6) Packaging and marking requirements for provisioned items; and

(7) Requirements for provisioning screening.

(f) *Provisioning technical documentation* means the data needed for the identification, selection, determination of initial requirements, and cataloging of support items to be acquired through the provisioning process. It includes such things as provisioning lists and logistics support analysis summaries. Descriptive data such as drawings and photographs are referred to as *supplementary provisioning technical documentation*.

217.7602 Contracting requirements.

217.7602–1 Contractual provisions.

Contracts containing provisioning requirements shall—

(a) List the provisioning functions to be performed and who will perform them;

(b) Include a provisioning requirements statement or specify a time limit for its incorporation into the contract by modification (revisions to the provisioning requirements statement shall also be incorporated by contract modification);

(c) Include on the DD Form 1423, Contract Data Requirements List, a schedule for delivery of provisioning technical documentation, or provide for the schedule to be incorporated later by contract modification;

(d) Require flowdown of the appropriate provisioning technical documentation requirement when the subcontractor prepares the documentation;

(e) Specify any applicable procedures for interim release by the contractor of long lead time items, and include ordering and funding instructions for such items. As a minimum, the instructions shall require the contractor to advise the contracting officer or provisioning activity at least 30 days before release of the items, their estimated costs, and the effective date of release;

(f) Specify the activity designated to issue provisioned items orders, i.e., contracting officer, provisioning activity, or administrative contracting officer. When it is expected that more than one activity will place provisioned items orders against the contract, state the requirements for provisioned items of each activity as separate contract line items;

(g) Provide a definitization schedule (normally 120 days after receipt of the contractor's proposal), and a timeframe for the contractor to furnish price proposals for provisioned items

orders (normally 60 days after order issuance);

(h) Specify exhibit identifiers applicable to the contract line/subline items; and

(i) Include procedures for processing changes (including cancellations) in quantities of items ordered.

217.7602–2 Issuance of provisioned items orders.

(a) Use the Standard Form 30, Amendment of Solicitation/Modification of Contract, to—

(1) Issue provisioned items orders;

(2) Decrease or cancel quantities of items ordered; and

(3) Cover the contractor's interim release of long lead items when the contracting officer approves the release (if the release is not approved, the contracting officer shall notify the contractor to cancel the items).

(b) Include in Block 14 of the Standard Form 30—

(1) The term PROVISIONED ITEMS ORDER in capital letters and underlined; and

(2) The appropriate exhibit identifier(s) for all attached exhibits.

(c) Obligate funds to cover the estimated price of the items being ordered. Show individual estimated prices for each exhibit line item on the accounting and payment office copies.

(d) Distribution is the same as for the basic contract (see FAR 4.2). However, if the exhibits are voluminous, the contracting officer may restrict distribution of the exhibits to the contract administration office.

(e) See subpart 217.74 for additional guidance and limitations on the use of undefinitized contract actions.

217.7603 Contract administration requirements.

217.7603–1 Provisioning conferences.

When requested by the contracting officer or provisioning activity, the contract administration office shall assist the contracting officer or provisioning activity in scheduling and determining the types of provisioning conferences required, e.g., guidance meetings, long lead time items conferences, source coding meetings.

217.7603–2 Contract administration office monitoring.

The contract administration office (CAO) shall monitor contracts containing provisioning requirements. As a minimum the CAO shall—

(a) Ensure that the contractor understands the provisioning requirements;

(b) Review contractor progress in the preparation of provisioning technical documentation and, if requested by the contracting officer or provisioning activity, inspect it for format and content;

(c) Ensure the prime contractor flows-down provisioning requirements to any subcontractor charged with preparation of documentation;

(d) Advise the contracting office or provisioning activity of delays in delivery of provisioning technical documentation or other related problems (see FAR subpart 42.11);

(e) Ensure contractor compliance with contract requirements concerning the assignment of national stock numbers; and

(f) Ensure that the contractor complies with contractual criteria for release of long lead time items.

217.7603–3 Negotiating and executing supplemental agreements.

(a) The administrative contracting officer (ACO) shall definitize provisioned items orders within the prescribed schedule.

(b) If the provisioned items order does not contain a delivery date, or the contractor cannot meet the date, the ACO shall coordinate the negotiated schedule with the contracting officer or provisioning activity before execution of the supplemental agreement.

(c) The ACO shall maintain records of provisioned items orders showing—

(1) The adequacy of obligated funds;

(2) Due dates for price proposals; and

(3) Actions taken to obtain additional funds or to deobligate excess funds.

Subpart 217.77—Over and Above Work

217.7700 Scope of subpart.

This subpart prescribes policies and procedures for acquisition of over and above work.

217.7701 Procedures.

(a) Contracts for the performance of maintenance, overhaul, modification, and repair of various items (e.g., aircraft, engines, ground support equipment, ships) generally contain over and above work requirements. When they do, the contracting officer shall establish a separate contract line item for the over and above work.

(b) Over and above requirements task the contractor to identify needed repairs and recommend corrective action during contract performance. The contractor submits a work request to identify the over and above work and, as appropriate, the Government authorizes the contractor to proceed.

(c) The clause at 252.217–7028, Over and Above Work, requires the contractor and the contracting officer responsible for administering the contract to negotiate specific procedures for Government administration and contractor performance of over and above work requests.

(d) The contracting officer may issue a blanket work request authorization describing the manner in which individual over and above work requests will be administered and setting forth a dollar limitation for all over and above work under the contract. The blanket work request authorization may be in the form of a letter or contract modification (Standard Form 30).

(e) Over and above work requests are within the scope of the contract. Therefore, procedures in subpart 217.74, Undefinitized Contractual Actions, do not apply.

(f) To the maximum extent practical, over and above work shall be negotiated prior to performance of the work.

217.7702 Contract clause.

Use the clause at 252.217–7028, Over and Above Work, in solicitations and contracts containing requirements for over and above work, except as provided for in subpart 217.71.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 219—SMALL BUSINESS PROGRAMS

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AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36353, July 31, 1991, unless otherwise noted.

219.000 Scope of part.

This part also implements 10 U.S.C. 2323, which sets a goal for DoD for each of fiscal years 1987 through 2000 to—

(1) Award five percent of contract and subcontract dollars to small disadvantaged business (SDB) concerns, historically black colleges and universities (HBCUs), and minority institutions (MIs) (See part 226 for policy/procedures on HBCU/MIs); and

(2) Maximize the number of such entities in DoD contracting and subcontracting.

[56 FR 36353, July 31, 1991, as amended at 59 FR 27670, May 27, 1994]

219.001 Definitions.

The definition of *small disadvantaged business concern* to be used for DoD contracts is in the provision at 252.219–7000 and is more restrictive than the definition in FAR 19.001.

Subpart 219.2—Policies

219.201 General policy.

(a) The DoD will use the section 8(a) program, small disadvantaged business set asides and evaluation preferences, advance payments, outreach, and technical assistance to meet its five percent goal for contract and subcontract awards to small disadvantaged businesses.

(c)(2) For the defense agencies, the director of the Office of Small and Disadvantaged Business Utilization shall be appointed by, be responsible to, and report directly to the director deputy director of the defense agency.

(7) The responsibility for assigning small business technical advisors is delegated to the head of the contracting activity.

(9) Contracting activity small business specialists perform this function by—

(A) Reviewing and making recommendations for all acquisitions over $10,000, except small business-small purchase set-asides;

(B) Making the review before issue of the solicitation or contract modification and documenting it on DD Form 2579, Small Business Coordination Record;

(C) Referring recommendations which have been rejected by the contracting officer to the Small Business Administration (SBA) procurement center representative. However, in the case of a rejected small disadvantaged business set-aside recommendation or if an SBA representative is not assigned or available, the specialist refers the matter to the specialist's appointing authority.

(d) Contracting and contract administration activities appoint small business specialists as directed by DoDD 4205.1, DoD Small Business and Small Disadvantaged Business Utilization Programs. Specialists—

(i) Report directly and are responsible only to their appointing authority;

(ii) Make sure that the contracting activity takes the necessary actions to implement small business, historically black college and university/minority institution, and labor surplus area programs;

(iii) Advise and assist contracting, program manager, and requirements personnel on all matters which affect small businesses, historically black colleges and universities or minority institutions, and labor surplus area concerns;

(iv) Aid, counsel, and assist small business, small disadvantaged business, historically black colleges and universities, and minority institutions by providing—

(A) Advice concerning acquisition procedures;

(B) Information regarding proposed acquisitions; and

(C) Instructions on preparation of proposals in the interpretation of

standard clauses, representations, and certifications;

(v) Maintain an outreach program (including participation in Government-industry conferences and regional interagency small business councils) designed to locate and develop information on the technical competence of small business, small disadvantaged business concerns, historically black colleges and universities, and minority institutions;

(vi) Ensure that financial assistance, available under existing regulations, is offered and also assist small business concerns in obtaining payments under their contracts, late payment, interest penalties, or information on contractual payment provisions;

(vii) Provide assistance to contracting officers in determining the need for and acceptability of subcontracting plans and assist administrative contracting officers (see 219.706(a)(ii)) in evaluating, monitoring, reviewing, and documenting contract performance to determine compliance with subcontracting plans; and

(viii) Recommend to the appointing authority the activity's small and disadvantaged business program goals, including goal assignments to subordinate contracting offices; monitor the activity's performance against these goals; and recommend action to correct reporting errors/deficiencies.

219.202 Specific policies.

219.202–1 Encouraging small business participation in acquisitions.

The DoD will maximize the use of small business concerns as planned producers in the Industrial Readiness Planning Program.

219.202–5 Data collection and reporting requirements.

Determine the premium percentage to be entered in Item D4E of the Individual Contract Action Report (DD Form 350), (see 253.204–70), as follows —

(1) For small disadvantaged business or historically black college and university/minority institution set-asides, divide the difference between the fair market price and the award price by the fair market price.

(2) For 219.7000 evaluation preference awards, divide the difference between the low responsive offer and the award price by the low responsive offer.

(3) For 219.502–3 preferential consideration awards, divide the difference between the award price on the non-set-aside portion and the award price on the set-aside portion by the award price on the non-set-aside portion.

(b) Within 60 days after the end of each fiscal year, departments and agencies shall submit the report to the Secretary of Defense, who will report to the SBA on behalf of all DoD departments and agencies. Reports must include—

(i) Justification for failure to meet goals established by the Office of the Secretary of Defense; and

(ii) Planned actions for increasing participation by such firms in future contract awards.

Subpart 219.3—Determination of Status as a Small Business Concern

219.301 Representation by the offeror.

(a) A concern must qualify as a small disadvantaged business (SDB) on the date of submission of its initial offer including price to be eligible for—

(i) Award under a small disadvantaged business set-aside;

(ii) Preferential consideration as an SDB under a partial set-aside; or

(iii) An evaluation preference for SDBs.

(b) The contracting officer shall protest an offeror's representation that it is a small disadvantaged business concern when—

(i) There is conflicting evidence;

(ii) The offeror represents that the Small Business Administration previously determined the concern to be non-disadvantaged; or

(iii) The offeror represents its ownership as other than Black American, Hispanic American, Native American (including Indian tribes and Native Hawaiian organizations), Asian Pacific American, or Subcontinent Asian American, unless the offeror represents that—

(A) It currently is in the Section 8(a) program; or

(B) Within the 6 months preceding submission of its offer, the offeror was determined by the Small Business Administration to be socially and economically disadvantaged, and no circumstances have changed to vary that determination.

[56 FR 36353, July 31, 1991, as amended at 59 FR 22131, Apr. 29, 1994; 62 FR 2613, Jan. 17, 1997]

219.302 Protesting a small business representation.

219.302–70 Protesting a small disadvantaged business representation.

This section applies to protests of a small business concern's status as socially and economically disadvantaged. Protests of a concern's size are processed under FAR 19.302. Any offeror, the contracting officer, or the Small Business Administration (SBA) may protest a concern's representation of disadvantaged status.

(a) An offeror may protest a concern's representation of disadvantaged status by filing a protest with the contracting officer. The protest—

(1) Must be filed within the times specified in FAR 19.302(d)(1); and

(2) Must contain specific detailed evidence supporting the basis of protest.

(b) The contracting officer or the SBA may protest a concern's representation of disadvantaged status at any time.

(1) If a contracting officer's protest is based on information brought to his/her attention by a party ineligible to protest directly or ineligible to protest under the timeliness standard, the contracting officer must be persuaded by the evidence presented before adopting the grounds for protest as his or her own.

(2) The SBA protests a concern's representation of disadvantaged status by filing directly with its Office of Program Eligibility and notifying the contracting officer.

(c) The contracting officer shall return untimely protests to the protestor. This includes protests filed before bid opening or notification of apparent successful offeror.

(d) Upon receipt of a timely protest, the contracting officer shall withhold award and forward the protest to the SBA Office of Program Eligibility, Office of Minority Small Business and Capitol Ownership Development, 409 3rd Street, SW., Washington, DC 20416. Send SBA—

(1) The protest;

(2) The date the protest was received and a determination of timeliness; and

(3) The date of bid opening or date on which notification of apparent successful offeror was sent to unsuccessful offerors.

(e) Do not withhold award when—

(1) The contracting officer makes a written determination that award must be made to protect the public interest; or

(2) The offeror represents that, within the 6 months preceding submission of its offer, the SBA has determined the concern to be socially and economically disadvantaged, and no circumstances have changed to vary that determination.

(f) The SBA Director, Office of Program Eligibility, will determine the disadvantaged status of the challenged offeror and notify the contracting officer, the challenged offeror, and the protestor. Award may be made on the basis of that determination. The determination is final for purposes of the instant acquisition, unless—

(1) It is appealed; and

(2) The contracting officer receives the appeal decision before award.

(g) If the contracting officer does not receive an SBA determination within 15 working days after the SBA's receipt of the protest, the contracting officer shall presume that the challenged offeror is socially and economically disadvantaged. Do not use the presumption as a basis for award without first inquiring as to when a determination can be expected and waiting for the determination, unless further delay in award would be disadvantageous to the Government.

(h) An SBA determination may be appealed by—

(1) The interested party whose protest has been denied;

(2) The concern whose status was protested; or

(3) The contracting officer.

The appeal must be filed with the SBA's Associate Administrator for Minority Small Business and Capital Ownership Development within five working days after receipt of the determination. If the contracting officer receives the SBA's decision on the appeal before award, the decision shall apply to the instant acquisition. If the decision is received after award, it will apply to future acquisitions.

[56 FR 36353, July 31, 1991, as amended at 62 FR 2613, Jan. 17, 1997]

219.304 Solicitation provisions.

(b) Use the provision at 252.219–7000, Small Disadvantaged Business Concern Representation (DoD Contracts) instead of the provision at FAR 52.219–2, Small Disadvantaged Business Concern Representation.

Subpart 219.4—Cooperation With the Small Business Administration

219.401 General.

(b) The contracting activity small business specialist is the primary activity focal point for interface with the SBA.

Subpart 219.5—Set-Asides for Small Business

219.501 General.

(g) This repetitive set-aside procedure applies to DoD.

(S–70) When a product or service has been acquired successfully by a contracting office as a small disadvantaged business set-aside, all future requirements of that office for that product or service shall be acquired as small disadvantaged business set-asides, except those—

(1) Processed under small purchase procedures; or

(2) For which the contracting officer determines there is no reasonable expectation that the criteria for a small disadvantaged business set-aside can be met (see 219.502–2–70(a)).

EFFECTIVE DATE NOTE: At 60 FR 54955, Oct. 27, 1995, in §219.501, (S–70) was stayed indefinitely.

219.502 Setting aside acquisitions.

219.502–1 Requirements for setting aside acquisitions.

Do not set aside acquisitions for—

(1) Supplies which were developed and financed, in whole or in part, by Canadian sources under the U.S.-Canadian Defense Development Sharing Program; or

(2) Architect-engineer services for military construction or family housing projects of $85,000 or more (10 U.S.C. 2855), including indefinite delivery and indefinite quantity contracts if the value of all anticipated orders is expected to total $85,000 or more.

[58 FR 28465, May 13, 1993]

219.502–2 Total set-asides.

(a) Unless the contracting officer determines that the criteria for set-aside cannot be met, set aside for small business concerns acquisitions for—

(i) Construction, including maintenance and repairs, under $2 million;

(ii) Dredging under $1 million; and

(iii) Architect-engineer services for military construction or family housing projects of under $85,000.

[58 FR 28465, May 13, 1993]

219.502–2–70 Total set-asides for small disadvantaged business concerns.

(a) Except as provided in paragraphs (b) and (c), the contracting officer shall set aside an acquisition for small disadvantaged businesses when there is a reasonable expectation that—

(1) Offers will be received from at least two responsible small disadvantaged business (SDB) concerns who—

(i) Can comply with the FAR 52.219–14 limitations on subcontracting; or

(ii) In the case of an SDB regular dealer owned by an Indian tribe, including an Alaska Native Corporation, will provide the supplies of a small business for contracts awarded during fiscal years 1994 and 1995, as provided in section 8051 of Pub. L. 103–139 and section 8012 of Pub. L. 103–335; or,

(iii) In the case of other SDB regular dealers, will provide the supplies of SDBs (except as provided in Alternate I of the clause at 252.219–7002, Notice of Small Disadvantaged Business Set-Aside).

(2) Award will be made at not more than ten percent above fair market price; and

(3) Scientific and/or technological talent consistent with the demands of the acquisition will be offered.

(b) Do not set aside acquisitions for SDBs when—

(1) The product or service has been successfully acquired as a small business set-aside (see FAR 19.501(g));

(2) The acquisition is for construction, including maintenance and repairs, and is under $2 million, or is for dredging under $1 million;

(3) The acquisition is for architect-engineer services or construction design for military construction projects, without regard to dollar value;

(4) The acquisition is reserved for the 8(a) program;

(5) The acquisition is processed under small purchase procedures; or

(6) The acquisition is for commissary or exchange resale items.

(c) Pursuant to 10 U.S.C. 2323(g), the Office of Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense (Acquisition & Technology), is responsible for determining whether use of small disadvantaged business (SDB) set-asides has caused a particular industry category to bear a disproportionate share of the contracts awarded by a particular contracting activity to achieve its SDB goal. Upon making a determination that a particular industry is bearing a disproportionate share, the OUSD(A&T) SADBU shall limit the use of total SDB set-asides in the affected industry category, at the contracting activity. This limitation shall not apply to solicitations that already had been synopsized as SDB set-asides. Forward requests for a determination through agency channels to OUSD(A&T) SADBU and include—

(1) The standard industrial (SIC) code(s) affected;

(2) Supporting information to justify the request, including dollars and percentages by the contracting activity, under the affected SIC code(s) for the previous two fiscal years and current fiscal year to date for—

(i) Total awards;

(ii) Total awards to small businesses;

(iii) Total awards to SDBs; and

(iv) Awards to SDBs under the SDB set-aside program.

(d) See 205.207(d) for information on Commerce Business Daily synopsis.

[56 FR 36353, July 31, 1991, as amended at 59 FR 24959, May 13, 1994; 59 FR 27670, May 27, 1994; 60 FR 29498, June 5, 1995]

EFFECTIVE DATE NOTE: At 60 FR 54955, Oct. 27, 1995, §219.502–2–70 was stayed indefinitely.

219.502–3 Partial set-asides.

When a portion of an acquisition is to be set aside for small business concerns, except acquisitions for commissary or exchange resale, the contracting officer shall give small disadvantaged business concerns preferential consideration by using the procedures in 252.219–7001, Notice of Partial Small Business Set-Aside with Preferential Consideration for Small Disadvantaged Business (SDB) Concerns.

219.502–4 Methods of conducting set-asides.

(b) Offers on a small disadvantaged business (SDB) set-aside from concerns that do not qualify as SDB concerns shall be considered nonresponsive and shall be rejected.

EFFECTIVE DATE NOTE: At 60 FR 54955, Oct. 27, 1995, §219.502–4 was stayed indefinitely.

219.504 Set-aside program order of precedence.

(b) The order of precedence for DoD is (except see 219.803(c) and 226.71)—

(i) Total set-aside for small disadvantaged business concerns;

(ii) Total set-aside for small business concerns;

(iii) Partial set-aside for small business concerns with preferential consideration for small disadvantaged business concerns.

[56 FR 36353, July 31, 1991, as amended at 59 FR 12192, Mar. 16, 1994]

EFFECTIVE DATE NOTE: At 60 FR 54955, Oct. 27, 1995, in §219.504, paragraph (b)(i) was stayed indefinitely.

219.505 Rejecting Small Business Administration recommendations.

(b) The designee shall be at a level no lower than chief of the contracting office.

219.506 Withdrawing or modifying set-asides.

(a) Do not withdraw small disadvantaged business set-asides for reasons of price reasonableness unless the low responsive responsible offer exceeds fair market price by more than ten percent.

EFFECTIVE DATE NOTE: At 60 FR 54955, Oct. 27, 1995, §219.506 was stayed indefinitely.

219.508 Solicitation provisions and contract clauses.

(d) Use the clause at 252.219–7001, Notice of Partial Small Business Set-Aside with Preferential Consideration for Small Disadvantaged Business Concerns, instead of the clause in FAR 52.219–7, Notice of Partial Small Business Set-Aside. Use the clause with its Alternate I when the contracting officer determines that there are no small disadvantaged business manufacturers that can meet the requirements of the solicitation.

(e) Use the clause at 52.219–14, Limitations on Subcontracting, also in small disadvantaged business set-asides.

[56 FR 36353, July 31, 1991, as amended at 57 FR 42630, Sept. 15, 1992]

EFFECTIVE DATE NOTE: At 60 FR 54955, Oct. 27, 1995, in §219.508, paragraph (e) was stayed indefinitely.

219.508–70 Solicitation provisions and contract clauses.

Use the clause at 252.219–7002, Notice of Small Disadvantaged Business Set-Aside, in solicitations and contracts for small disadvantaged business set-asides. Use the clause with its Alternate I when the contracting officer determines that there are no small disadvantaged business manufacturers that can meet the requirements of the solicitation.

EFFECTIVE DATE NOTE: At 60 FR 54955, Oct. 27, 1995, §219.508–70 was stayed indefinitely.

Subpart 219.6—Certificates of Competency

219.602 Procedures.

219.602–1 Referral.

When making a nonresponsibility determination on a small business concern, the contracting officer shall notify the contracting activity's small business specialist.

[58 FR 28465, May 13, 1993, as amended at 60 FR 40107, Aug. 7, 1995]

219.602–3 Resolving differences between the agency and the Small Business Administration.

(c)(i) If the contracting officer believes the agency should appeal, the contracting officer shall immediately inform the departmental director of the Office of Small and Disadvantaged Business Utilization, and send the director, through departmental channels—

(A) A request for appeal, summarizing the issues. The request must be sent to arrive within five working days after receipt of the SBA Headquarters' written position.

(B) An appeal file, documenting the contracting activity's position. The file must be sent to arrive within five working days after transmission of the request.

(ii) The departmental director will determine whether the agency will appeal and will notify the SBA of the agency's intent.

[56 FR 36353, July 31, 1991, as amended at 62 FR 34122, June 24, 1997]

Subpart 219.7—Subcontracting with Small Business, Small Disadvantaged Business and Women-Owned Small Business Concerns

219.702 Statutory requirements.

(a) Section 834 of Public Law 101–189, as amended, requires the DoD to establish a test program to determine whether comprehensive subcontracting plans on a corporate, division, or plant-wide basis will reduce administrative burdens while enhancing subcontracting opportunities for small and small disadvantaged business concerns.

(i) The test program—

(A) Will be conducted—

(*1*) From October 1, 1990, through September 30, 1998;

(*2*) In accordance with the DoD test plan, ''Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans;'' and

(*3*) By the military departments and agencies through specifically designated contracting activities; and

(B) Permits contractors selected by the designated contracting activities to—

(*1*) Negotiate plant, division, or company-wide comprehensive subcontracting plans instead of individual contract subcontracting plans; and

(*2*) Use the comprehensive plans in all DoD contracts which require a subcontracting plan.

(ii) The comprehensive subcontracting plans will—

(A) Be negotiated on an annual basis by the designated contracting activities;

(B) Be incorporated by the contractors' cognizant contract administration activity into all of the contractors' active DoD contracts which require a plan;

(C) Be used by all DoD contracting officers in contracts, which require a plan, awarded the selected contractors during the test period; and

(D) Not be subject to application of liquidated damages during the period of the test program (section 402, Pub. L. 101–574).

[56 FR 36353, July 31, 1991, as amended at 60 FR 35668, July 10, 1995; 61 FR 39900, July 31, 1996]

219.703 Eligibility requirements for participating in the program.

(a) Qualified nonprofit agencies for the blind and other severely disabled, that have been approved by the Committee for Purchase from People Who Are Blind or Severely Disabled under the Javits-Wagner-O'Day Act (41 U.S.C. 46–48), are eligible as a result of section 9077 of Pub. L. 102–396, and subsequent Appropriations Acts, and sections 808 of Pub. L. 102–484 and 804 of Pub. L. 103–337 through September 30, 1997, to participate in the program. Under this authority, subcontracts awarded to such entities may be counted toward the prime contractor's small business subcontracting goal through fiscal year 1997.

(2)(A) To be eligible as an SDB subcontractor, a concern must meet the definition in the provision at 252.219–7000, Small Disadvantaged Business Concern Representation (DoD Contracts).

(B) To be eligible as a historically black college or university or minority institution subcontractor, such entity must meet the definition in the clause at 252.219–7003, Small Business and Small Disadvantaged Business Subcontracting Plan (DoD Contracts).

(b) A contractor may also rely on the written representation as to status of—

(i) A historically black college or university or minority institution; or

(ii) A qualified nonprofit agency for the blind and other severely handicapped approved by the Committee for Purchase from the Blind and Other Severely Handicapped.

[57 FR 42630, Sept. 15, 1992, as amended at 58 FR 28465, May 13, 1993; 60 FR 13075, Mar. 10, 1995; 60 FR 41157, Aug. 11, 1995; 60 FR 61596, Nov. 30, 1995; 61 FR 50535, Sept. 26, 1996]

219.704 Subcontracting plan requirements.

(a)(1) The goal for use of small disadvantaged business concerns shall include subcontracts with historically black colleges and universities and minority institutions (see subpart 226.70), in addition to subcontracts with small disadvantaged business concerns. Subcontracts with historically black colleges and universities and minority institutions do not have to be included in the small disadvantaged business goal in commercial items subcontracting plans.

(4) In those subcontracting plans which specifically identify small, small disadvantaged, and women-owned small businesses, prime contractors shall notify the administrative contracting officer of any substitutions of firms that are not small, small disadvantaged, or women-owned small businesses for the firms listed in the subcontracting plan. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.

[60 FR 61596, Nov. 30, 1995, as amended at 61 FR 18687, Apr. 29, 1996]

219.705 Responsibilities of the contracting officer under the subcontracting assistance program.

219.705–2 Determining the need for a subcontracting plan.

(d) See 215.605 for unique DoD requirements.

[59 FR 27670, May 27, 1994]

219.705–4 Reviewing the subcontracting plan.

(d) Challenge any subcontracting plan that does not contain positive goals and consider the extent to which an offeror plans to use competition restricted to small disadvantaged business concerns, historically black colleges and universities, or minority institutions. A small disadvantaged business goal of less than five percent must be approved two levels above the contracting officer.

219.706 Responsibilities of the cognizant administrative contracting officer.

(a)(i) The contract administration office also is responsible for reviewing, evaluating, and approving master subcontracting plans.

(ii) The small business specialist supports the administrative contracting officer in evaluating a contractor's performance and compliance with its subcontracting plan.

219.708 Solicitation provisions and contract clauses.

(b)(1)(A) Use the clause at 252.219–7003, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts), in solicitations and contracts that contain the clause at FAR 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan.

(B) In contracts with contractors which have comprehensive subcontracting plans approved under the test program described in 219.702(a), use the clause at 252.219–7004, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (Test Program), instead of the clauses at 252.219–7003, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts), and FAR 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan.

(2) In contracts with contractors which have comprehensive subcontracting plans approved under the test program described in 219.702(a), do not use the clause at FAR 52.219–16, Liquidated Damages—Small Business Subcontracting Plan.

(c)(1) Do not use the clause at FAR 52.219–10, Incentive Subcontracting Program for Small and Small Disadvantaged Business Concerns.

(A) When contracting by negotiation, use the clause at 252.219–7005, Incentive for Subcontracting with Small Businesses, Small Disadvantaged Businesses, Historically Black Colleges and Universities, and Minority Institutions, in all solicitations and contracts that contain the clause at FAR 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan. Incentives for exceeding SDB subcontracting goals shall be paid only if an SDB subcontracting goal was exceeded as a result of actual subcontract awards to SDBs, and not as a result of developmental assistant credit under the Pilot Mentor-Protege Program (see subpart 219.71).

(B) Use the clause at 252.219–7005 with its Alternate I when, in the judgement of the contracting officer, inclusion of an incentive is necessary to increase subcontracting opportunities for other small businesses.

(C) Determine the percentage to be negotiated and used in the clause by considering the type and extent of effort required to exceed the goal, for example—

(*1*) Unique outreach programs;

(*2*) Use of small disadvantaged businesses, historically black colleges and universities, and minority institutions in nontraditional areas;

(*3*) Technical assistance to qualify or assist these entities; and

(*4*) Proximity of subcontractors to the prime.

(D) Do not use the clauses at 252.219–7005 and FAR 52.219–10 in contracts with contractors which have comprehensive subcontracting plans approved under the test program described in 219.702(a).

(c)(2) For negotiated acquisitions of $10 million or more, the contracting officer may use an award fee provision instead of the incentive provision required by (c)(1)(A). When an award fee provision is used, do not use the clauses at 252.219–7005, Incentive for Subcontracting with Small Businesses, Small Disadvantaged Businesses, Historically Black Colleges and Universities, and Minority Institutions, and FAR 52.219–10, Incentive Subcontracting Program for Small and Small Disadvantaged Business Concerns. Do not use award fee provisions in contracts with contractors which have comprehensive subcontracting plans approved under the test program described in 219.702(a).

[56 FR 36353, July 31, 1991, as amended at 56 FR 67213, Dec. 30, 1991; 61 FR 39901, July 31, 1996]

Subpart 219.8—Contracting With the Small Business Administration (The 8(a) Program)

219.803 Selecting acquisitions for the 8(a) Program.

(b) Contracting activities should respond to SBA requests for contract support within 30 calendar days after receipt.

(c) Before considering the set-aside order of precedence in 219.504(b), review the acquisition for offering under the 8(a) Program.

219.804 Evaluation, offering, and acceptance.

219.804–1 Agency evaluation.

When SBA asks for a requirement for the 8(a) Program, offer the requirement if appropriate, and do not use the small disadvantaged business set-aside procedure. If an acquisition, other than a repetitive acquisition (as described in FAR 19.804–4), was synopsized using either of the notices in 205.207(d) (i) or (ii) before receipt of the SBA request, the request does not have to be honored.

(f) The 8(a) firms should be offered the opportunity to give a technical presentation.

Subpart 219.10—Small Business Competitiveness Demonstration Program

219.1005 Applicability.

(a)(3)(A) Architect-engineering services in support of military construction projects or military family housing projects are exempt from the Small Business competitiveness Demonstration Program, except for the emerging small business (ESB) set-aside requirements. Accordingly, these shall—

(*1*) Be reviewed for possible award under the 8(a) program regardless of dollar value.

(*2*) Not be set-aside for small business or small disadvantaged business if the estimated value is $85,000 or more (including indefinite delivery-indefinite quantity contracts if the value of all anticipated orders exceeds $85,000).

(*3*) Be considered for ESB set-aside if the estimated value is both less than the emerging small business reserve amount and less than $85,000.

(*4*) Be considered for small business set-aside (but not SDB set-aside) if the estimated value is less than $85,000, regardless of whether small business set-asides for other architect-engineer services are prohibited under the Small Business Competitiveness Demonstration Program, when an ESB set-aside is not appropriate.

(B) All requirements of the Small Business Competitiveness Demonstration Program apply to architect-engineer services in support of other than military construction projects or military housing objects, which otherwise meet criteria at FAR 19.1005(a)(3).

(b) The targeted industry categories for DoD are:

Standard industrial classification (SIC)	SIC Code
(1) Pharmaceutical preparations	2834
(2) Ammunition, except for small arms	3483
(3) Ordnance and accessories, not elsewhere classified	3489
(4) Turbines and turbine generator sets	3511
(5) Aircraft engines and engine parts	3724
(6) Guided missiles and space vehicles	3761
(7) Space vehicle equipment, NEC	3769
(8) Tanks and tank components	3795
(9) Search and navigation equipment	3812
(10) Communication services, NEC	4899

[56 FR 36353, July 31, 1991, as amended at 59 FR 27670, May 27, 1994; 62 FR 34122, June 24, 1997]

219.1006 Procedures.

(b)(1) During the period when small business set-asides cannot be considered for acquisitions in the four designated industry groups—

(A) The restrictions at 219.502–2–70(b)(1) and (2) do not apply and the acquisitions shall be considered for small disadvantaged business set-asides; and

(B) The evaluation preference at 219.70 shall not be used. However, note the test program at 219.72 for construction acquisitions.

(2) The Director, Small and Disadvantaged Business Utilization, Office of the Deputy Under Secretary of Defense (International & Commercial Programs), will determine whether reinstatement of small business set-asides are necessary to meet the agency goal and will recommend reinstatement to the Director, Defense Procurement. Military departments and defense agencies shall not reinstate small business set-asides unless directed by the Director, Defense Procurement.

(d) Reporting requirements are at 204.670–9.

[58 FR 28466, May 13, 1993, as amended at 61 FR 18687, Apr. 29, 1996; 62 FR 34122, June 24, 1997]

219.1007 Solicitation provisions.

Do not use the clause at 252.219–7006, Notice of Evaluation Preference for Small Disadvantaged Business Concerns, in solicitations or contracts for the four designated industry groups.

[56 FR 36353, July 31, 1991, as amended at 57 FR 42630, Sept. 15, 1992]

Subpart 219.70—Evaluation Preference for Small Disadvantaged Business (SDB) Concerns

219.7000 Policy.

Offers from small disadvantaged business concerns shall be given an evaluation preference in accordance with this subpart.

219.7001 Applicability.

(a) The evaluation preference shall be used in competitive acquisitions except as provided in paragraph (b) of this section and in 219.1006(b)(1)(B).

(b) Do not use the evaluation preference in acquisitions which—

(1) Use small purchase procedures;

(2) Are set-aside for small disadvantaged businesses;

(3) Are set-aside for small businesses;

(4) Are for commissary or exchange resale; or

(5) Are for long distance telecommunications services.

[56 FR 36353, July 31, 1991, as amended at 60 FR 43563, Aug. 22, 1995; 61 FR 18687, Apr. 29, 1996]

219.7002 Procedures.

(a) Give offers from small disadvantaged business concerns a preference in evaluation by adding a factor of ten percent to the price of all offers, except—

(1) Offers from small disadvantaged business concerns, which have not waived the evaluation preference;

(2) Offers from historically black colleges and universities or minority institutions, which have not waived the evaluation preference;

(3) Otherwise successful offers of—

(i) Eligible products under the Trade Agreements Act when the acquisition equals or exceeds the dollar threshold in FAR 25.402; or

(ii) Qualifying country end products (see the definition in 225.101); and

(4) Offers where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government.

(b) Apply the factor on a line item by line item basis or apply it to any group of items on which award may be made. Add other evaluation factors such as transportation costs or rent-free use of Government facilities to the offers before applying the ten percent factor.

(c) Do not evaluate offers using the preference when it would cause award to be made at a price which exceeds fair market price by more than ten percent.

(d) In partial small business set-asides, use the evaluation preference procedures set forth in the clause at

252.219–7001, Notice of Partial Small Business Set-Aside with Preferential Consideration for Small Disadvantaged Business Concerns, instead of the procedures in paragraphs (a) through (c) of this section.

219.7003 Solicitation provisions and contract clauses.

Use the clause at 252.219–7006, Notice of Evaluation Preference for Small Disadvantaged Business Concerns, in solicitations and contracts involving the evaluation preference, except those which include the clause at 252.219–7001, Notice of Partial Small Business Set-Aside with Preferential Consideration for Small Disadvantaged Business Concerns. Use the clause with its Alternate I when the contracting officer determines that there are no small disadvantaged business manufacturers that can meet the requirements of the solicitation.

Subpart 219.71—Pilot Mentor-Protege Program

SOURCE: 59 FR 27670, May 27, 1994, unless otherwise noted.

219.7100 Scope.

This subpart implements the Pilot Mentor-Protege Program established under section 831 of the National Defense Authorization Act for Fiscal Year 1991, Public Law 101–510, as amended. The purpose of the Program is to provide incentives for DoD contractors to assist small disadvantaged businesses in enhancing their capabilities and to increase participation of such firms in Government and commercial contracts. Qualified organizations employing the severely disabled, as defined in section 8064A of Public Law 102–172, are also eligible to participate as protege firms.

219.7101 Policy.

DoD policy and procedures for implementation of the Program are contained in appendix I to chapter 2, Policy and Procedures for the DoD Pilot Mentor-Protege Program.

219.7102 General.

The Program includes—

(a) Mentor firms, which are prime contractors with at least one active subcontracting plan negotiated under FAR subpart 19.7.

(b) Protege firms, which are small disadvantaged business (SDB) concerns or qualified organizations employing the severely disabled, eligible for receipt of Federal contracts and selected by the mentor firm.

(c) Mentor-protege agreements, which establish a developmental assistance program for a protege firm.

(d) Incentives, which may be provided to mentor firms by the DoD including:

(1) Reimbursement for developmental assistance costs through—

(i) A separate contract;

(ii) A separately priced contract line item on a DoD contract; or

(iii) Inclusion of program cost in indirect expense pools.

(2) Credit toward SDB subcontracting goals, established under a subcontracting plan negotiated under FAR subpart 19.7, for developmental assistance costs which are either reimbursed through indirect expense pools or are not reimbursed; or

(3) A combination of reimbursement and credit.

219.7103 Procedures.

219.7103–1 General.

The procedures for application, acceptance, and participation in the program are in appendix I to chapter 2, Policy and Procedures for the DoD Pilot Mentor-Protege Program. The Director of Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense (Acquisition and Technology) approves contractors as mentor firms, approves mentor-protege agreements, and forwards approved mentor-protege agreements to the contracting officer when program funding is available through a DoD Program Manager.

219.7103–2 Contracting officer responsibilities.

Contracting officers shall—

(a) Negotiate an advance agreement on the treatment of developmental assistance costs for credit, reimbursement, or both, if the mentor firm proposes such an agreement, or delegate

authority to negotiate to the administrative contracting officer (see FAR 31.109).

(b) Modify (without consideration) applicable contract(s) to incorporate the clause at 252.232–7005, Reimbursement of Subcontractor Advance Payments-DoD Pilot Mentor-Protege Program, when advance payments are provided by a mentor firm to a protege firm under the Program and the mentor firm requests reimbursement of advance payments.

(c) Modify (without consideration) applicable contract(s) to incorporate other than customary progress payments for small disadvantaged businesses in accordance with FAR 32.504(c) if such payments are provided by a mentor firm to a protege firm and the mentor firm requests reimbursement.

(d) Modify applicable contract(s) to establish a contract line item for reimbursement of developmental assistance costs—

(1) When funds have been made available for that purpose by a DoD program manager; and

(2) The contractor has an approved mentor-protege agreement.

(e) Advise contractors of reporting requirements in appendix I to chapter 2.

219.7104 Developmental assistance costs eligible for reimbursement or credit.

(a) Developmental assistance provided under an approved mentor-protege agreement is distinct from, and shall not duplicate, any effort that is the normal and expected product of the award and administration of the mentor firm's subcontracts. Costs associated with the latter shall be accumulated and charged in accordance with the contractor's approved accounting practices. Mentor firm costs which are eligible for reimbursement are set forth in appendix I to chapter 2.

(b) Before incurring any costs under the Program, mentor firms need to establish the accounting treatment of developmental assistance costs eligible for reimbursement or credit. Advance agreements are encouraged. To be eligible for reimbursement under the Program, costs must be incurred before October 1, 1999.

(c) If the mentor firm is suspended or debarred while performing under an approved mentor-protege agreement, the mentor firm may not be reimbursed or credited for developmental assistance costs incurred more than 30 days after the imposition of the suspension or debarment.

(d) Developmental assistance costs, incurred by a mentor firm before October 1, 1999, that are eligible for crediting under the Program may be credited towards subcontracting plan goals as set forth in appendix I to chapter 2.

[59 FR 27670, May 27, 1994, as amended at 61 FR 54346, Oct. 18, 1996]

219.7105 Reporting.

Mentor firms shall report on the progress made under active mentor-protege agreements semi-annually as indicated in section I–111 of appendix I to chapter 2.

Subpart 219.72—Evaluation Preference for Small Disadvantaged Business (SDB) Concerns in Construction Acquisitions—Test Program

SOURCE: 61 FR 18688, Apr. 29, 1996, unless otherwise noted.

219.7200 Policy.

DoD policy is to ensure that, during this test program, offers from small disadvantaged business (SDB) concerns shall be given an evaluation preference in construction acquisitions.

219.7201 Administration of the test program.

The test program will be conducted over a 36-month period. The test program will be conducted by all DoD contracting activities that award construction contracts. The focal point for the test program is the Director, Small and Disadvantaged Business Utilization (SADBU), Office of the Deputy Under Secretary of Defense (International and Commercial Programs). The military departments and defense agencies shall submit status reports to the Director, SADBU. The first status report shall be submitted 18 months after initiation of the test program;

the second status report shall be submitted 36 months after initiation of the test program. These reports shall specify the impact of the evaluation preference over each of the reporting periods of the test program, and shall provide recommendations with respect to continuation and/or modification of the evaluation preference.

[61 FR 18688, Apr. 29, 1996, as amended at 61 FR 50452, Sept. 26, 1996]

219.7202 Applicability.

(a) The evaluation preference shall be used in competitive acquisitions for construction (see definition in FAR Subpart 36.1) when work is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

(b) Do not use the evaluation preference in acquisitions which—

(1) Are less than or equal to the simplified acquisition threshold;

(2) Are set aside for small businesses; or

(3) Are awarded under section 8(a) procedures.

(c) The evaluation preference need not be applied when the head of the contracting activity determines that the evaluation preference is having a disproportionate impact on non-SDB concerns or nondisadvantaged small business concerns.

219.7203 Procedures.

(a) Solicitations that require bonding shall require offerors to separately state bond costs in the offer. Bond costs include the costs of bid, performance, and payment bonds.

(b) Evaluate total offers. If the apparently successful offeror is an SDB concern, no preference-based evaluation is required under this subpart.

(c) If the apparently successful offeror is not an SDB concern, evaluate offers excluding bond costs. If, after excluding bond costs, the apparently successful offeror is an SDB concern, add bond costs back to all offers, and give offers from SDB concerns a preference in evaluation by adding a factor of 10 percent to the total price of all offers, except—

(1) Offers from SDBs which have not waived the evaluation preference; and

(2) Offers from historically black colleges and universities or minority institutions, which have not waived the evaluation preference.

(d) When using the procedures in 236.303–70, Additive or deductive items, the evaluation preference in this subpart shall be applied.

219.7204 Contract clause.

Use the clause at 252.219–7008, Notice of Evaluation Preference for Small Disadvantaged Business Concerns—Construction Acquisitions—Test Program, in all solicitations—

(1) That involve the evaluation preference of this subpart; and

(2) Where work is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

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AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36358, July 31, 1991, unless otherwise noted.

222.001 Definition.

Labor advisor, as used in this part, means the departmental or agency headquarters labor advisor.

Subpart 222.1—Basic Labor Policies

222.101 Labor relations.

222.101–1 General.

(a) Contracting offices shall—

(i) Obtain departmental approval before contacting a national office of a labor organization, a Government agency headquarters, or any other organization on a labor relations matter;

(ii) Notify departmental headquarters as required in departmental procedures when contacted by the national office of any labor organization or Government agency headquarters;

(iii) Obtain the approval of the agency head on major policy decisions regarding labor relations matters such as recommendations for plant seizure or injunctive action relating to potential or actual work stoppages; and

(iv) Submit questions involving FAR part 22 or other contractor labor relations matters to the labor advisor.

222.101–3 Reporting labor disputes.

The contract administration office shall—

(1) Notify the labor advisor, the contracting officer, and the head of the contracting activity when interference is likely;

(2) Disseminate information on labor disputes in accordance with departmental procedures; and

(3) File an initial labor dispute report using DD Form 1507, Work Stoppage Report, when a work stoppage is imminent or when a work stoppage occurs. File a follow-up report when a significant change occurs in the dispute. This reporting requirement is assigned Report Control Symbol DD–ACQ (AR) 1153.

[56 FR 36358, July 31, 1991, as amended at 56 FR 67215, Dec. 30, 1991; 59 FR 27671, May 27, 1994]

222.101–3–70 Impact of labor disputes on defense programs.

(a) Each department and agency shall determine the degree of impact of potential or actual labor disputes on its own programs and requirements. In making these determinations, consider, for example—

(1) Whether the dispute involves a product, project (including construction), or service which must be obtained in order to meet schedules for urgently needed military programs or requirements; and

(2) Whether alternative sources of supply for the product, project, or service are reasonably available to fulfill the requirement or program in time to maintain essential military schedules.

(b) Each contracting activity involved shall obtain and develop data reflecting the impact of a labor dispute on its requirements and programs. Upon determining the impact, the head of the contracting activity shall submit a report of findings and recommendations to the labor advisor. The report must be in narrative form and include—

(1) Location of dispute and name of contractor or subcontractor involved;

(2) A description of the impact, including how the specific items or services affect the specific programs or requirements;

(3) Identity of alternate sources available to furnish the supply or service within the time required; and

(4) A description of any action taken to reduce the impact.

(c) The head of the contracting activity shall submit impact reports to the agency head when—

(1) Specifically requested; or

(2) The department or agency considers the impact to be of sufficient urgency to warrant the attention of the agency head.

(d) The labor advisor will expand the report submitted under paragraph (c) of this subsection by addressing the following, as appropriate—

(1) *Description of military program, project, or service.* Identify item, project, or service which will be or is being affected by the work stoppage. Describe its normal use and current functions in combat, combat support, or deterrent operations. For components or raw materials, identify the end item(s) for which they are used.

(2) *Requirements and assets.* Identify requirements and assets in appropriate detail in terms commonly used by the DoD component.

(i) For production programs, include requirements for each using military service. Where applicable, state in detail production schedule, inventory objectives, assets against these objectives, and critical shortages. For spares and highly expendable items, such as ground and air ammunition, show usage (consumption) rates and assets in absolute terms and in terms of daily, weekly, or monthly supplies. For components, include requirements for spares.

(ii) For projects, describe the potential adverse effects of a delay in meeting schedules, and its impact on the national security.

(iii) For services, describe how a loss or interruption affects the ability to support Defense operations in terms of traffic requirements, assets, testing programs, etc.

(3) *Possible measures to minimize strike impact.* Describe—

(i) Capabilities, if any, to substitute items or to use alternate sources and indicate the number of other facilities available and the relative capabilities

of such facilities in meeting total requirements;

(ii) How much time would be required to replace the loss of the facilities or service affected by a work stoppage; and

(iii) The feasibility of transferring assets from theater to theater to relieve deficits in some areas of urgency.

(4) *Conclusion*. (i) Describe the impact on operations of a 15–30, 30–60, and a 60–90 day work stoppage.

(ii) Project the degree of criticality of a program, project, or service resulting from a work stoppage on a calendar basis, indicating the increased impact, if any, as the stoppage lengthens. Criticality is measured by the number of days required for the work stoppage to have an effect on operational capability. This time must be stated in terms of days.

222.101–4 Removal of items from contractors' facilities affected by work stoppages.

(a) When a contractor is unable to deliver urgent and critical items because of a work stoppage at its facility, the contracting officer, before removing any items from the facility, shall—

(i) Before initiating any action, contact the labor advisor to obtain the opinion of the national office of the Federal Mediation and Conciliation Service or other mediation agency regarding the effect movement of the items would have on labor negotiations. Normally removals will not be made if they will adversely affect labor negotiations.

(ii) Upon the recommendation of the labor advisor, provide a written request for removal of the material to the cognizant contract administration office. Include the following information in the request—

(A) Contract number;

(B) A statement as to the urgency and criticality of the item needed;

(C) A description of the items to be moved (nature of the item, amount, approximate weight and cubic feet, item number, etc.);

(D) Mode of transportation by which the items are to be moved, if different than in the contract, and whether by Government or commercial bill of lading; and

(E) Destination of the material, if different from that specified in the contract.

(iii) With the assistance of the labor advisor or the commander of the contract administration office, attempt to have both the management and the labor representatives involved agree to shipment of the material by normal means.

(iv) If agreement for removal of the needed items cannot be reached following the procedures in paragraphs (a) (i) through (iii) of this subsection, the commander of the contract administration office, after obtaining approval from the labor advisor, may seek the concurrence of the parties to the dispute to permit movement of the material by military vehicles with military personnel. On receipt of such concurrences, the commander may proceed to make necessary arrangements to move the material.

(v) If agreement for removal of the needed items cannot be reached following any of the procedures in paragraphs (a) (i) through (iv) of this subsection, refer the matter to the labor advisor with the information required by 222.101–3–70(b). If the labor advisor is unsuccessful in obtaining concurrence of the parties for the movement of the material and further action to obtain the material is deemed necessary, refer the matter to the agency head. Upon review and verification that the items are urgently or critically needed and cannot be moved with the consent of the parties, the agency head, on a nondelegable basis, may order removal of the items from the facility.

222.101–70 Acquisition of stevedoring services during labor disputes.

(a) Use the following procedures only in the order listed when a labor dispute delays performance of a contract for stevedoring services which are urgently needed.

(1) Attempt to have management and labor voluntarily agree to exempt military supplies from the labor dispute by continuing the movement of such material.

(2) Divert vessels to alternate ports able to provide necessary stevedoring services.

(3) Consider contracting with reliable alternative sources of supply within the stevedoring industry.

(4) Utilize civil service stevedores to perform the work performed by contract stevedores.

(5) Utilize military personnel to handle the cargo which was being handled by contract stevedores prior to the labor dispute.

(b) Notify the labor advisor when a deviation from the procedures in paragraph (a) of this subsection is required.

222.102 Federal and State labor requirements.

222.102–1 Policy.

(1) The Department of Labor is responsible for the administration and enforcement of the Occupational Safety and Health Act (OSHA). Contracting officers shall—

(i) Direct all inquiries from contractors or contractor employees regarding the applicability or interpretation of the OSHA regulations to the Department of Labor; and

(ii) Upon request, provide the address of the appropriate field office of the Occupational Safety and Health Administration of the Department of Labor.

(2) Do not initiate any application for the suspension or relaxation of labor requirements without prior coordination with the labor advisor.

222.103 Overtime.

222.103–4 Approvals.

(a) The department/agency approving official shall—

(i) Obtain the concurrence of other appropriate approving officials; and

(ii) Seek agreement as to the contracts under which overtime premiums will be approved when—

(A) Two or more contracting offices have current contracts at the same contractor facility; and

(B) The approval of overtime by one contracting office will affect the performance or cost of contracts of another office. In the absence of evidence to the contrary, a contracting officer may rely on a contractor's statement that approval of overtime premium pay for one contract will not affect performance or payments under any other contract.

Subpart 222.3—Contract Work Hours and Safety Standards Act

222.302 Liquidated damages and overtime pay.

Upon receipt of notification of Contract Work Hours and Safety Standards Act violations, the contracting officer shall—

(1) Immediately withhold such funds as are available;

(2) Give the contractor written notification of the withholding and a statement of the basis for the liquidated damages assessment. The written notification shall also inform the contractor of its 60 days right to appeal the assessment, through the contracting officer, to the agency official responsible for acting on such appeals; and

(3) If funds available for withholding are insufficient to cover liquidated damages, ask the contractor to pay voluntarily such funds as are necessary to cover the total liquidated damage assessment.

(d)(i) The assessment shall become the final administrative determination of contractor liability for liquidated damages when—

(A) The contractor fails to appeal to the contracting agency within 60 days from the date of the withholding of funds;

(B) The department agency, following the contractor's appeals, issues a final order which affirms the assessment of liquidated damages or waives damages of $500 or less; or

(C) The Secretary of Labor takes final action on a recommendation of the agency head to waive or adjust liquidated damages in excess of $500.

(ii) Upon final administrative determination of the contractor's liability for liquidated damages, the contracting officer shall transmit withheld or collected funds determined to be owed the Government as liquidated damages to the servicing finance and accounting officer for crediting to the appropriate Government Treasury account. The contracting officer shall return any excess withheld funds to the contractor.

Subpart 222.4—Labor Standards for Contracts Involving Construction

222.402 Applicability.

222.402–70 Installation support contracts.

(a) Apply both the Service Contract Act (SCA) and the Davis-Bacon Act (DBA) to installation support contracts if—

(1) The contract is principally for services but also requires a substantial and segregable amount of construction, alteration, renovation, painting, or repair work; and

(2) The aggregate dollar value of such construction work exceeds or is expected to exceed $2,000.

(b) SCA coverage under the contract. Contract installation support requirements, such as plant operation and installation services (i.e., custodial, snow removal, etc.) are subject to the SCA. Apply SCA clauses and minimum wage and fringe benefit requirements to all contract service calls or orders for such maintenance and support work.

(c) DBA coverage under the contract. Contract construction, alteration, renovation, painting, and repair requirements (i.e., roof shingling, building structural repair, paving repairs, etc.) are subject to the DBA. Apply DBA clauses and minimum wage requirements to all contract service calls or orders for construction, alteration, renovation, painting, or repairs to buildings or other works.

(d) Repairs versus maintenance. Some contract work may be characterized as either DBA painting/repairs or SCA maintenance. For example, replacing broken windows, spot painting, or minor patching of a wall could be covered by either the DBA or the SCA. In those instances where a contract service call or order requires construction trade skills (i.e., carpenter, plumber, painter, etc.), but it is unclear whether the work required is SCA maintenance or DBA painting/repairs, apply the following rules—

(1) Individual service calls or orders which will require a total of 32 or more work-hours to perform shall be considered to be repair work subject to the DBA.

(2) Individual service calls or orders which will require less than 32 work-hours to perform shall be considered to be maintenance subject to the SCA.

(3) Painting work of 200 square feet or more to be performed under an individual service call or order shall be considered to be subject to the DBA regardless of the total work-hours required.

(e) The determination of labor standards application shall be made at the time the solicitation is prepared in those cases where requirements can be identified. Otherwise, the determination shall be made at the time the service call or order is placed against the contract. The service call or order shall identify the labor standards law and contract wage determination which will apply to the work required.

(f) Contracting officers may not avoid application of the DBA by splitting individual tasks between orders or contracts.

222.403 Statutory and regulatory requirements.

222.403–4 Department of Labor regulations.

Direct all questions regarding Department of Labor regulations to the labor advisor.

222.404 Davis-Bacon Act wage determinations.

Not later than April 1 of each year, each department and agency shall furnish the Administrator, Wage and Hour Division, with a general outline of its proposed construction program for the coming fiscal year. The Department of Labor uses this information to determine where general wage determination surveys will be conducted.

(1) Indicate by individual project of $500,000 or more—

(i) The anticipated type of construction;

(ii) The estimated dollar value; and

(iii) The location in which the work is to be performed (city, town, village, county, or other civil subdivision of the state).

(2) The report format is contained in Department of Labor All Agency Memo 144, December 27, 1985.

(3) The report control number is 1671–DOL–AN.

222.404–2 General requirements.

(c)(5) Information concerning the proper application of wage rate schedules to the type or types of construction involved shall be obtained from the appropriate district commander, Corps of Engineers, for the Army; from the cognizant Naval Facilities Engineering Command division for the Navy; from the appropriate Regional Industrial Relations Office for the Air Force; and from the appropriate Defense Contract Management District, ATTN: Industrial Labor Relations Office, for the Defense Logistics Agency.

222.404–3 Procedures for requesting wage determinations.

(b) *Requests for project wage determinations.* Submit requests for project wage determinations directly to the Department of Labor.

222.404–11 Wage determination appeals.

Send a copy of a petition for review filed by the contracting agency to the labor advisor.

222.406 Administration and enforcement.

222.406–1 Policy.

(a) *General.* The program shall also include—

(i) Training appropriate contract administration, labor relations, inspection, and other labor standards enforcement personnel in their responsibilities; and

(ii) Periodic review of field enforcement activities to ensure compliance with applicable regulations and instructions.

(b) *Preconstruction letters and conferences.* (1) Promptly after award of the contract, the contracting officer shall provide a preconstruction letter to the prime contractor. This letter should accomplish the following, as appropriate—

(A) Indicate that the labor standards requirements contained in the contract are based on the following statutes and regulations—

(*1*) Davis-Bacon Act;

(*2*) Contract Work Hours and Safety Standards Act;

(*3*) Copeland (Anti-Kickback) Act;

(*4*) Parts 3 and 5 of the Secretary of Labor's Regulations (parts 3 and 5, subtitle A, title 29, CFR); and

(*5*) Executive Order 11246 (Equal Employment Opportunity);

(B) Call attention to the labor standards requirements in the contract which relate to—

(*1*) Employment of foremen, laborers, mechanics, and others;

(*2*) Wages and fringe benefits payments, payrolls, and statements;

(*3*) Differentiation between subcontractors and suppliers;

(*4*) Additional classifications;

(*5*) Benefits to be realized by contractors and subcontractors in keeping complete work records;

(*6*) Penalties and sanctions for violations of the labor standards provisions; and

(*7*) The applicable provisions of FAR 22.403; and

(C) Ensure that the contractor sends a copy of the preconstruction letter to each subcontractor.

(2) Before construction begins, the contracting officer shall confer with the prime contractor and any subcontractor designated by the prime to emphasize their labor standards obligations under the contract when—

(A) The prime contractor has not performed previous Government contracts;

(B) The prime contractor experienced difficulty in complying with labor standards requirements on previous contracts; or

(C) It is necessary to determine whether the contractor and its subcontractors intend to pay any required fringe benefits in the manner specified in the wage determination or to elect a different method of payment. If the latter, inform the contractor of the requirements of FAR 22.406–2.

222.406–6 Payrolls and statements.

(a) *Submission.* Contractors who do not use Department of Labor Form WH 347 or its equivalent must submit a DD Form 879, Statement of Compliance, with each payroll report.

222.406–8 Investigations.

(a) The following guidance and procedures apply to investigations conducted by the contracting activity. (i)

Beginning of the investigation. The investigator shall—

(A) Inform the contractor of the investigation in advance;

(B) Verify the exact legal name of the contractor, its address, and the names and titles of its principal officers;

(C) Outline the general scope of the investigation and that it includes examining pertinent records and interviewing employees; and

(D) Inform the contractor that the names of the employees to be interviewed will not be divulged to the contractor;

(E) When requested, provide a letter from the contracting officer verifying the investigator's authority.

(ii) *Conduct of the investigation*—(A) *Review of the contract.*

(*1*) Verify that all required labor standards and clauses and the wage determination are included in the contract.

(*2*) Review the following items in the contract file, if applicable—

(*i*) List of subcontractors;

(*ii*) Payroll statements for the contractor and subcontractors;

(*iii*) Approvals of additional classifications;

(*iv*) Data regarding apprentices and trainees as required by FAR 22.406–4;

(*v*) Daily inspector's report or other inspection reports;

(*vi*) Employee interview statements; and

(*vii*) SF 1413, Statement and Acknowledgement.

(B) *Interview of the complainant.* Interview the complainant except when this is impractical. The interview shall cover all aspects of the complaint to ensure that all pertinent information is obtained. Whenever an investigation does not include an interview of the complainant, explain such omission in the investigator's report.

(C) *Interview of employees and former employees.* (*1*) Interview a sufficient number of employees or former employees, who represent all classifications, to develop information regarding the method and amount of payments, deductions, hours worked, and the type of work performed.

(*2*) Interview employees at the job site if the interviews can be conducted privately and in such a manner so as to cause the least inconvenience to the employer and employees.

(*3*) Former employees may be interviewed elsewhere.

(*4*) Do not disclose to any employee any information, finding, recommendation, or conclusion relating to the investigation except to the extent necessary to obtain required information.

(*5*) Do not disclose any employee's statement to anyone, except a Government representative working on the case, without the employee's written permission.

(*6*) Obtain information by mail when personal interviews are impractical.

(*7*) Use SF 1445, Labor Standards Interview, for employee interviews.

(*8*) Request employees to sign their statements and to initial any changes.

(*9*) Provide an evaluation of each employee's credibility.

(D) *Interview of foremen.* Interview foremen to obtain information concerning the contractor's compliance with the labor standards provisions with respect to employees under the foreman's supervision and the correctness of the foreman's classification as a supervisory employee. All procedures established for the conduct of employee interviews, and the recording and use of information obtained, apply to foremen interviews.

(E) *Interview of the contractor.* (*1*) Interview the contractor whenever the investigation indicates the possibility of a violation.

(*2*) Inform the contractor that—

(*i*) The interview does not mean that a violation has been found or that a requirement for corrective action exists; and

(*ii*) The purpose of the interview is to obtain only such data as the contractor may desire to present in connection with the investigation.

(*3*) Do not disclose the identity of any individual who filed a complaint or was interviewed.

(F) *Review of contractor and subcontractor records.* (*1*) Review contractor and subcontractor records such as basic time cards, books, cancelled payroll checks, fringe benefits, and payment records. Compare them with submitted payrolls. When discrepancies are found, include pertinent excerpts or

copies of the records in the investigation report with a statement of the discrepancy and any explanation the investigator obtains. When wages include contributions or anticipated costs for fringe payments requiring approval of the Secretary of Labor, examine the contractor records to ensure such approval has been obtained and that any requirements specified in the approval have been met. (See FAR 22.406–2(a)(3)).

(*2*) Review contractor's and subcontractor's weekly payrolls and payroll statements for completeness and accuracy regarding the following—

(*i*) Identification of employees, payroll amount, the contract, contractor, subcontractor, and payroll period;

(*ii*) Inclusion of only job classifications and wage rates specified in the contract specifications, or otherwise established for the contract or subcontract;

(*iii*) Computation of daily and weekly hours;

(*iv*) Computation of time-and-one half for work in excess of 40 hours per week in accordance with FAR 22.406–2(c);

(*v*) Gross weekly wages;

(*vi*) Deductions;

(*vii*) Computation of net weekly wages paid to each employee;

(*viii*) Ratio of helpers, apprentices, and trainees to laborers and mechanics;

(*ix*) Apprenticeship and trainee registration and ratios; and

(*x*) Computation of fringe benefits payments.

(*3*) Transcribe the contractor's records whenever they contain information at variance with payrolls or other submitted documents.

(*i*) Make the transcriptions in sufficient detail to permit them to be used to check computations of restitution and to determine amounts to be withheld from the contractor.

(*ii*) Follow the form used by the contractor.

(*iii*) Place comments or explanations concerning the transcriptions on separate memoranda or in the narrative report.

(*iv*) Determine whether the wage determination, any modifications of the determination, and any additional classifications are posted as required.

(iii) *Submission of the report of investigation.* The investigator shall submit a report of the investigation in accordance with agency procedures. Each report shall include at least the—

(A) Basis for the investigation, including the name of the complainant;

(B) Names and addresses of prime contractors and subcontractors involved, and names and titles of their principal officers;

(C) Contract number, date, dollar value of prime contract, and date and number of wage determination included in the contract;

(D) Description of the contract and subcontract work involved;

(E) Summary of the findings with respect to each of the items listed in 222.406–8(a)(ii);

(F) Concluding statement concerning—

(*1*) The types of violations, including the amount of kickbacks under the Copeland Act, underpayments of basic hourly rates and fringe benefits under the Davis-Bacon Act, or underpayments and liquidated damages under the Contract Work Hours and Safety Standards Act;

(*2*) Whether violations are considered to be willful or due to the negligence of the contractor or its agent;

(*3*) The amount of funds withheld from the contractor; and

(*4*) Other violations found.

(G) Exhibits indexed and appropriately tabbed, including copies of the following, when applicable—

(*1*) Complaint letter;

(*2*) Contract wage determination;

(*3*) Preconstruction letter and memorandum of preconstruction conference;

(*4*) Payrolls and statements indicating violations;

(*5*) Transcripts of pertinent records of the contractor, and approvals of fringe benefit payments;

(*6*) Employee interview statements;

(*7*) Foreman interview statements;

(*8*) Statements of others interviewed, including Government personnel;

(*9*) Detailed computations showing kickbacks, underpayments, and liquidated damages;

(*10*) Summary of all payments due to each employee or to a fund plan or program, and liquidated damages; and

(*11*) Receipts and cancelled checks.

(c) *Notification to the contractor.*

(4)(A) Notify the contractor by certified mail of any finding that it is liable for liquidated damages under the Contract Work Hours and Safety Standards Act (CWHSSA). The notification shall inform the contractor that—

(*1*) It has 60 days after receipt of the notice to appeal the assessment of liquidated damages; and

(*2*) The appeal must demonstrate either that the alleged violations did not occur at all, occurred inadvertently notwithstanding the exercise of due care, or the assessment was computed improperly.

(B) If an appeal is received, the contracting officer shall process the appeal in accordance with department or agency regulations.

(d) *Contracting officer's report.* (1) In accordance with agency procedures, the contracting officer shall forward a detailed enforcement report or summary report in duplicate. These reports shall include at least the following—

(A) SF 1446, Labor Standards Investigation Summary Sheet;

(B) Contracting officer's findings;

(C) Statement as to the disposition of any contractor rebuttal to the findings;

(D) Statement as to whether the contractor has accepted the findings and has paid any restitution or liquidated damages;

(E) Statement as to the disposition of funds available;

(F) Recommendations as to disposition or further handling of the case (when appropriate, include recommendations as to the reduction, waiver, or assessment of liquidated damages, whether the contractor should be debarred, and whether the file should be referred for possible criminal prosecution); and

(G) When applicable the following exhibits—

(*1*) Investigator's report;

(*2*) Copy of the contractor's written rebuttal or a summary of the contractor's oral rebuttal of the contracting officer's findings;

(*3*) Copies of correspondence between the contractor and contracting officer, including a statement of specific violations found, corrective action requested, and the contractor's letter of acceptance or rejection;

(*4*) Evidence of the contractor's payment of restitution or liquidated damages. (Copies of receipts, canceled checks, or supplemental payrolls); and

(*5*) Letter from the contractor requesting relief from the liquidated damage provisions of the CWHSSA.

222.406–9 Withholding from or suspension of contract payments.

(a) *Withholding from contract payments.* The contracting officer shall contact the labor advisor for assistance when payments due a contractor are not available to satisfy that contractor's liability for Davis-Bacon or CWHSSA wage underpayments or liquidated damages.

(c) *Disposition of contract payments withheld or suspended.*

(3) *Limitation on forwarding or returning funds.* When disposition of withheld funds remains the final action necessary to close out a contract, the Department of Labor has given blanket approval to forward withheld funds to the Comptroller General pending completion of an investigation or other administrative proceedings.

(4) *Liquidated damages.*

(A) The agency head may adjust liquidated damages of $500 or less when the amount assessed is incorrect or waive the assessment when the violations—

(*1*) Were nonwillful or inadvertent; and

(*2*) Occurred notwithstanding the exercise of due care by the contractor, its subcontractor, or their agents.

(B) The agency head may recommend to the Administrator, Wage and Hour Division, that the liquidated damages over $500 be adjusted because the amount assessed is incorrect. The agency head may also recommend the assessment be waived when the violations—

(*1*) Were nonwillful or inadvertent; and

(*2*) Occurred notwithstanding the exercise of due care by the contractor, the subcontractor, or their agents.

222.406–10 Disposition of disputes concerning construction contract labor standards enforcement.

(d) Forward the contracting officer's findings and the contractor's statement through the labor advisor.

222.406–13 Semiannual enforcement reports.

Forward these reports through the head of the contracting activity to the labor advisor within 15 days following the end of the reporting period. These reports shall not include information from investigations conducted by the Department of Labor. These reports shall contain the following information, as applicable, for construction work subject to the Davis-Bacon Act and the CWHSSA—

(1) Period covered;

(2) Number of prime contracts awarded;

(3) Total dollar amount of prime contracts awarded;

(4) Number of contractors/subcontractors against whom complaints were received;

(5) Number of investigations conducted;

(6) Number of contractors/subcontractors found in violation;

(7) Amount of wage restitution found due under—

(i) Davis-Bacon Act

(ii) CWHSSA;

(8) Number of employees due wage restitution under—

(i) Davis-Bacon Act

(ii) CWHSSA;

(9) Amount of liquidated damages assessed under the CWHSSA—

(i) Total amount

(ii) Number of contracts involved;

(10) Number of employees and amount paid/withheld under—

(i) Davis-Bacon Act

(ii) CWHSSA

(iii) Copeland Act; and

(11) Preconstruction activities—

(i) Number of compliance checks performed

(ii) Preconstruction letters sent.

222.407 Contract clauses.

In contracts with a State or political subdivision, use the contract clauses prescribed in FAR 22.407, but preface these clauses with the following—

The Contractor agrees to comply with the requirements of the Contract Work Hours and Safety Standards Act and to insert the following clauses in all subcontracts under this contract with private persons or firms.

Subpart 222.6—Walsh-Healey Public Contracts Act

222.604 Exemptions.

222.604–2 Regulatory exemptions.

(c) Submit all applications for such exemptions through contracting channels to the labor advisor.

222.608 Procedures.

222.608–4 Award pending final determination.

(b)(1) The head of the contracting activity is the approval authority for the contracting officer's certification.

Subpart 222.8—Equal Employment Opportunity

222.804 Affirmative action programs.

222.804–2 Construction.

(b) Contracting officers forward requests for instructions directly to the servicing Office of Federal Contract Compliance Programs (OFCCP) regional office (see FAR 22.609).

222.805 Procedures.

(a)(2) See FAR 22.609 for a list of OFCCP regional offices.

222.806 Inquiries.

(b) Refer inquiries through the labor advisor.

222.807 Exemptions.

(c) Submit the request for exemption with a justification through contracting channels to the labor advisor who will forward them to the agency head. If the request is submitted under FAR 22.807(a)(1), the agency head shall act on the request. If the exemption is granted, the agency head shall notify the Director, OFCCP of such action within 30 days. If the request is submitted under FAR 22.807(a)(2) or (b)(5), the agency head will forward it to the Director, OFCCP for action.

Subpart 222.10—Service Contract Act of 1965, as Amended

222.1003 Applicability.

222.1003–1 General.

For contracts having a substantial amount of construction, alteration, renovation, painting, or repair work, see 222.402–70.

222.1003–7 Questions concerning applicability of the Act.

Contracting officers may contact the labor advisor by telephone for informal advice. Submit requests for formal determinations as to the Act's applicability to the labor advisor in writing through appropriate channels.

222.1008 Procedures for preparing and submitting Notice (SF 98/98a).

222.1008–2 Preparation of SF 98a.

(b)(1) The contracting officer shall secure the assistance of cognizant customer/technical personnel to ensure maximum use of the Service Contract Act Directory of Occupations (Directory) and incorporation of all service employee classes (Directory and nondirectory) expected to be utilized.

(2)(A) When the statement of work job title, for which there is a Directory equivalent, differs from the Directory job title, make a written cross-reference either directly on the SF 98a file copy or on an attached sheet to the SF 98a file copy.

(B) Include and note as such any classifications and minimum hourly wage rates conformed under any predecessor contract. Where a previously conformed classification is not included in the Directory, attach the job description to the SF 98a.

222.1008–7 Required time of submission of notice.

(d) Submit requests for immediate wage determination responses for emergency acquisitions through the labor advisor. If the request is justified, the labor advisor will contact Department of Labor headquarters officials.

222.1014 Delay of acquisition dates over 60 days.

Send update requests in writing directly to the Wage and Hour Division and provide a copy to the labor advisor. The update request shall—

(1) State that one or more dates on the original notice have been delayed more than 60 days;

(2) List the new dates; and

(3) Include a copy of the original notice and SF 98a as enclosures.

Subpart 222.13—Special Disabled and Vietnam Era Veterans

222.1303 Waivers.

(c) The contracting officer shall submit a waiver request through contracting channels to the labor advisor. If the request is justified, the labor advisor will endorse the request and forward it for action to—

(i) The agency head for waivers under FAR 22.1303(a); or

(ii) The Secretary of Defense, without the power of redelegation, for waivers under FAR 22.1303(b).

222.1306 Complaint procedures.

The contracting officer shall—

(1) Forward each complaint received as indicated in FAR 22.1306; and

(2) Notify the complainant of the referral. The contractor in question shall not be advised in any manner or for any reason of the complainant's name, the nature of the complaint, or the fact that the complaint was received.

222.1308 Contract clauses.

(a)(1) Use of the clause at FAR 52.222–35, Affirmative Action for Special Disabled and Vietnam Era Veterans, with its paragraph (c), Listing Openings, also satisfies the requirement of 10 U.S.C. 2410d.

[58 FR 28466, May 13, 1993]

Subpart 222.14—Employment of the Handicapped

222.1403 Waivers.

(c) The contracting officer shall submit a waiver request through contracting channels to the labor advisor. If the request is justified, the labor advisor

will endorse the request and forward it for action to—

(i) The agency head for waivers under FAR 22.1403(a). For the defense agencies, waivers must be approved by the Under Secretary of Defense for Acquisition.

(ii) The Secretary of Defense, without the power of redelegation, for waivers under FAR 22.1403(b).

222.1406 Complaint procedures.

The contracting officer shall—

(1) Forward each complaint received as indicated in FAR 22.1406 (see FAR 22.609 for a listing of Department of Labor regional/area offices); and

(2) Notify the complainant of such referral. The contractor in question shall not be advised in any manner or for any reason of the complainant's name, the nature of the complaint, or the fact that the complaint was received.

Subpart 222.70—Restrictions on the Employment of Personnel for Work on Construction/Service Contracts in Alaska and Hawaii

222.7000 Scope of subpart.

(a) This subpart implements section 8078 of the 1986 Defense Appropriations Act, Public Law 99–190, and similar sections in subsequent Defense Appropriations Acts.

(b) This subpart applies only—

(1) To construction and service contracts to be performed in whole or in part within the states of Alaska or Hawaii; and

(2) When the unemployment rate in the state is in excess of the national average rate of unemployment as determined by the Secretary of Labor.

[56 FR 36358, July 31, 1991, as amended at 57 FR 14993, Apr. 23, 1992]

222.7001 General.

A contractor awarded a contract subject to this subpart must employ for the purpose of performing that portion of the contract work within the state, individuals who are residents of that state, and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills to perform the contract.

222.7002 Waivers.

Waivers may be granted, in the interest of national security, at a level no lower than the Assistant Secretary of any department.

222.7003 Contract clause.

Use the clause at 252.222–7000, Restrictions on Employment of Personnel, in all solicitations and contracts subject to this subpart.

Subpart 222.71—Right of First Refusal of Employment

SOURCE: 57 FR 52593, Nov. 4, 1992, unless otherwise noted.

222.7100 Scope of subpart.

This subpart prescribes policies and procedures for use in acquisitions arising from closure of military installations.

222.7101 Policy.

(a) DoD policy is to minimize the adverse impact on civil service employees affected by the closure of military installations. One means of implementing this policy is to give employees adversely affected by closure of a military installation the right of first refusal for jobs created by award of contracts arising from the closure effort that the employee is qualified to fill.

(b) Closure efforts include the acquisitions for preparing the installation for closure (such as environmental restoration and utilities modification) and maintaining the property after closure (such as security and fire prevention services).

222.7102 Contract clause

Use the clause at 252.222–7001, Right of First Refusal of Employment—Closure of Military Installations, in all solicitations and contracts arising from the closure of the military installation where the contract will be performed.

Subpart 222.72—Compliance with Labor Laws of Foreign Governments

222.7200 Scope of subpart.

This subpart prescribes contract clauses, with respect to labor laws of foreign governments, for use when contracting for services or construction within a foreign country.

[62 FR 34122, June 24, 1997]

222.7201 Contract clauses.

(a) Use the clause at 252.222–7002, Compliance with Local Labor Laws (Overseas), in solicitations and contracts for services or construction to be performed outside the United States, its possessions, and Puerto Rico.

(b) Use the clause at 252.222–7003, Permit from Italian Inspectorate of Labor, in solicitations and contracts for porter, janitorial, or ordinary facility and equipment maintenance services to be performed in Italy.

(c) Use the clause at 252.222–7004, Compliance with Spanish Social Security Laws and Regulations, in solicitations and contracts for services or construction to be performed in Spain.

[62 FR 34122, June 24, 1997]

PART 223—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

Sec.

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Subpart 223.72—Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives

223.7200 Definition.
223.7201 Policy.
223.7202 Preaward responsibilities.
223.7203 Contract clause.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36365, July 31, 1991, unless otherwise noted.

Subpart 223.1—Pollution Control and Clean Air and Water

223.104 Exemptions.

(c) The authority to act for the agency head under this subpart is limited to a level no lower than an official who is appointed by and with the advice of the Senate. For the defense agencies, this is the Under Secretary of Defense (Acquisition and Technology).

[60 FR 61596, Nov. 30, 1995]

Subpart 223.3—Hazardous Material Identification and Material Safety Data

223.300 Scope of subpart.

DoD procedures for use in acquisitions involving ammunition and explosives are in 223.370.

223.302 General.

(b) Successful offerors are also required to submit hazard warning labels under the clause at 252.223–7001, Hazard Warning Labels.

(e) The contracting officer shall also provide hazard warning labels received from apparent successful offerors to the cognizant safety officer or other designated official in order to facilitate—

(i) Inclusion of relevant data in the department/agency's material safety data sheet information system or label information system; and

(ii) Other control, safety, or information purposes.

[56 FR 67215, Dec. 30, 1991]

223.303 Contract clause.

Use the clause at 252.223–7001, Hazard Warning Labels, in solicitations and contracts which require submission of hazardous material data sheets (see FAR 23.302(c)).

[56 FR 67215, Dec. 30, 1991]

223.370 Safety precautions for ammunition and explosives.

223.370–1 Scope.

(a) This section applies to all acquisitions involving the use of ammunition and explosives, including acquisitions for—

(1) Development;
(2) Testing;
(3) Research;
(4) Manufacturing;
(5) Handling or loading;
(6) Assembling;
(7) Packaging;
(8) Storage;
(9) Transportation;
(10) Renovation;
(11) Demilitarization;
(12) Modification;
(13) Repair;
(14) Disposal;
(15) Inspection; or
(16) Any other use, including acquisitions requiring the use or the incorporation of materials listed in paragraph (b) of this subsection for initiation, propulsion, or detonation as an integral or component part of an explosive, an ammunition, or explosive end item or weapon system.

(b) This section does not apply to acquisitions solely for—

(1) Inert components containing no explosives, propellants, or pyrotechnics;
(2) Flammable liquids;
(3) Acids;
(4) Oxidizers;
(5) Powdered metals; or
(6) Other materials having fire or explosive characteristics.

223.370–2 Definition.

Ammunition and explosives, as used in this section, is defined in the clause at 252.223–7002, Safety Precautions for Ammunition and Explosives.

223.370–3 Policy.

(a) DoD policy is to ensure that its contractors take reasonable precautions in handling ammunition and explosives so as to minimize the potential for mishaps that could—

(1) Interrupt DoD operations;
(2) Delay project or product completion dates;
(3) Adversely impact DoD mission readiness, production base, or production capabilities;
(4) Damage or destroy DoD property; or
(5) Cause injury to DoD personnel.

(b) This policy is implemented by DoD Manual 4145.26–M, DoD Contractors' Safety Manual for Ammunition and Explosives, which is incorporated into contracts under which ammunition and explosives are handled. The manual contains mandatory safety requirements for contractors. When work is to be performed on a Government-owned installation, the contracting officer may use the ammunition and explosives regulation of the DoD component or installation as a substitute for, or supplement to, DoD Manual 4145.26–M, as long as the contract cites these regulations.

223.370–4 Procedures.

(a) *Preaward phase*—(1) *Waiver of the mandatory requirements.* (i) Before either omitting the clause at 252.223–7002, Safety Precautions for Ammunition and Explosives, from solicitations and contracts or waiving the mandatory requirements of the manual, obtain approval of—

(A) The safety personnel responsible for ammunition and explosives safety; and

(B) The head of the contracting activity.

(ii) If the contracting officer decides to waive the mandatory requirements before award, the contracting officer shall set forth in the solicitation, or in an amendment of the solicitation, the specific requirements to be waived.

(iii) If the head of the contracting activity declines to approve a request for waiver, but the prospective contractor agrees to take corrective action to bring the operation into compliance, make the corrective action a part of the resulting contract.

(2) *Transportation considerations*—If shipment of ammunition and explosives is involved in the contract, address in the schedule of the contract the applicable Department of Transportation or Military Traffic Management Command requirements and any other requirements for transportation, packaging, marking, and labeling.

(3) *Disposition of excess*—Include instructions within the contract concerning final disposition of excess Government furnished material containing ammunition and explosives, including defective or rejected supplies.

(4) *Preaward survey*—Before awarding any contract, including purchase orders, involving ammunition and explosives, obtain a preaward ammunition and explosives safety survey. If the prospective contractor proposes subcontracting any ammunitions or explosive work, include a review of the subcontractor's facility in the preaward survey.

(b) *Postaward phase*—(1) *Contract administration office responsibility.* (i) The contract administration office is responsible for verifying that the safety requirements of the clause at 252.223–7002, Safety Precautions for Ammunition and Explosives, are being implemented in a manner that will reduce, to the maximum extent practicable, or eliminate the probability of a mishap occurring.

(ii) The clause at 252.223–7002, Safety Precautions for Ammunition and Explosives, requires the contractor to submit to the administrative contracting officer (ACO) any postaward requests for a waiver of the contract safety standards, a site plan modification, or a construction review. The ACO shall review any request and make recommendations to the contracting officer. The contracting officer shall make a decision after considering recommendations of the ACO and safety personnel responsible for ammunition and explosive safety.

(A) If the request arrives at the contracting office without evidence that the ACO has seen it, immediately send it to the ACO for review and recommendations.

(B) When the contracting officer has made a determination approving or disapproving the contractor's request, send the determination to the ACO for transmission to the contractor.

(2) *Subcontracts*—(i) The clause at 252.223–7002, Safety Precautions for Ammunition and Explosives, requires the contractor to notify the contracting officer when placing a subcontract for ammunition and explosives. The contracting officer should coordinate with the safety personnel and request supporting contract administration in accordance with FAR 42.204. If the contracting officer believes the nature of the subcontract work poses a potential danger to Government property, Government personnel, production capability, or contract completion, request supporting contract administration.

(ii) If the preaward safety survey identified areas in which a subcontractor was not complying with the manual, and the subcontractor was supposed to correct the deficiencies before start-up, the contracting officer shall require a preoperations survey to verify that the corrections were made.

(iii) When postaward safety reviews by the Government uncover any safety deficiencies in the subcontractor's operation, the review team shall inform

the ACO cognizant of the subcontractor, who shall immediately notify the ACO cognizant of the prime contractor. The ACO cognizant of the prime shall inform the prime contractor of deficiencies requiring correction. The notifications shall be made by the most expeditious means appropriate to the circumstance. If a critical safety deficiency poses an imminent danger, the ACO cognizant of the prime shall make the notifications by the most expeditious means available.

[56 FR 36365, July 31, 1991, as amended at 59 FR 27671, May 27, 1994]

223.370–5 Contract clauses.

Use the clauses at 252.223–7002, Safety Precautions for Ammunition and Explosives, and 252.223–7003, Change in Place of Performance—Ammunition and Explosives, in all solicitations and contracts for acquisition to which this section applies.

Subpart 223.4—Use of Recovered Materials

223.404 Procedures.

(b)(3) A contract for an EPA designated item which does not meet the EPA or agency minimum recovered material standards shall not be awarded before approval of the written determination required by FAR 23.404(b)(3). The approving official shall be—

(A) A general or flag officer, or a member of the Senior Executive Service, of the requiring activity; or

(B) For requiring activities without a general or flag officer or member of the Senior Executive Service, the commander of the activity.

(4) Annual contractor certifications shall be submitted for consolidation and reporting in accordance with department/agency procedures.

[60 FR 61596, Nov. 30, 1995]

Subpart 223.5—Drug-Free Workplace

SOURCE: 57 FR 32737, July 23, 1992, unless otherwise noted.

223.570 Drug-free work force.

223.570–1 Definitions.

Employee in a sensitive position and *illegal drugs,* as used in this section, are defined in the clause at 252.223–7004, Drug-Free Work Force.

223.570–2 Policy.

DoD policy is to ensure that its contractors maintain a program for achieving a drug-free work force.

223.570–3 General.

(a) The use of illegal drugs is inconsistent with the law-abiding behavior expected of all citizens. Employees who use illegal drugs tend to be less productive, less reliable, and prone to greater absenteeism. The use of illegal drugs by contractor employees results in the potential for increased cost, delay, and risk in the performance of a Government contract.

(b) If a contractor's employees use illegal drugs at any time, it can—

(1) Impair their ability to perform tasks that are critical to proper contract performance;

(2) Increase the potential for accidents and for failures that can pose a serious threat to the national security, health, and safety;

(3) Cause less than the complete reliability, stability, and good judgment required of an individual who has access to sensitive information;

(4) Create the possibility of coercion, influence, and irresponsible action under pressure that may post a serious risk to national security, health, and safety.

223.570–4 Contract clause.

(a) Use the clause at 252.223–7004, Drug-Free Work Force, in all solicitations and contracts—

(1) That involve access to classified information; or

(2) When the contracting officer determines that the clause is necessary for reasons of national security or for the purpose of protecting the health or safety of those using or affected by the product of, or performance of, the contract.

(b) Do not use the clause in solicitations and contracts for—

(1) Commercial items; or

(2) Performance or partial performance outside the United States, its territories, and possessions, unless the contracting officer determines such inclusion to be in the best interest of the Government.

[57 FR 32737, July 23, 1992, as amended at 60 FR 61597, Nov. 30, 1995]

Subpart 223.8—Ozone-Depleting Substances

223.803 Policy.

Section 211.271, Elimination of use of class I ozone-depleting substances, places restrictions on award or modification of DoD contracts requiring the use of class I ozone-depleting substances. These restrictions are in addition to any imposed by the Clean Air Act and apply after June 1, 1993, to all DoD contracts, regardless of place of performance.

[61 FR 50452, Sept. 26, 1996]

Subpart 223.70—Hazardous Waste Disposal

223.7000 Scope of subpart.

This subpart implements section 331 of the Defense Authorization Act for Fiscal Year 1992 (Pub. L. 102–190) and similar sections in subsequent Defense authorization acts.

[58 FR 28466, May 13, 1993]

223.7001 Definitions.

As used in this subpart—

(a) *Remedial action* has the meaning given that term by section 101(24) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(24)).

(b) *Corrective action* has the meaning given that term under section 3004(u) of the Solid Waste Disposal Act (42 U.S.C. 6924(u)).

[57 FR 14993, Apr. 23, 1992]

223.7002 Contract clause.

(a) Use the clause at 252.223–7005, Hazardous Waste Liability, in all solicitations and contracts for the offsite treatment or disposal of hazardous waste from a facility under the jurisdiction of the Secretary of Defense—

(1) Entered into during or after fiscal year 1992;

(2) With an owner or operator of a hazardous waste treatment or disposal facility.

(b) The clause at 252.223–7005 does not apply to contracts—

(1) For performance of remedial action or corrective action under—

(i) The Defense Environmental Restoration Program;

(ii) Other programs or activities of the Department of Defense; or

(iii) Authorized State hazardous waste programs;

(2) Under which the generation of the hazardous waste to be disposed of is incidental to the performance of the contract; or

(3) For disposition of ammunition or solid rocket motors.

Use of the clause at 252.223–7005 may be waived if the Secretary of Defense or the Secretary of the military department concerned determines that—

(1) There is only one responsible offeror or there is no responsible offeror willing to provide the reimbursement required by paragraph (b) of the clause; or

(2) Failure to award the contract would place the facility concerned in violation of any requirement of the Solid Waste Disposal Act (42 U.S.C. 6901 *et seq.*).

[57 FR 14993, Apr. 23, 1992, as amended at 57 FR 53599, Nov. 12, 1992; 58 FR 28466, May 13, 1993]

Subpart 223.71—Storage and Disposal of Toxic and Hazardous Materials

SOURCE: 58 FR 28466, May 13, 1993, unless otherwise noted.

223.7100 Policy.

10 U.S.C. 2692 prohibits storage or disposal of non-DoD-owned toxic or hazardous materials on DoD installations, except as provided in 223.7102. DoD Directive 6050.8, Storage and Disposal of Non-DoD-Owned Hazardous or Toxic Materials on DoD Installations, implements 10 U.S.C. 2692.

223.7101 Procedures.

(a) If the contracting officer is uncertain as to whether particular activities are prohibited or fall under one of the exceptions in 223.7102, the contracting officer should seek advice from the cognizant office of counsel.

(b) When storage, treatment, or disposal of non-DoD-owned toxic or hazardous materials is authorized in accordance with this subpart, the contract or authorization should specify the types, conditions, and quantities of toxic or hazardous materials that may be temporarily stored, treated, or disposed of in connection with the contract or as a result of the authorized commercial use of a DoD industrial-type facility.

[60 FR 61597, Nov. 30, 1995]

223.7102 Exceptions.

(a) The prohibition of 10 U.S.C. 2692 does not apply to—

(1) The storage of strategic and critical materials in the National Defense Stockpile under an agreement for such storage with the Administrator of General Services Administration;

(2) The temporary storage or disposal of explosives in order to protect the public or to assist agencies responsible for Federal law enforcement in storing or disposing of explosives when no alternative solution is available, if such storage or disposal is made in accordance with an agreement between the Secretary of Defense and the head of the Federal agency concerned;

(3) The temporary storage or disposal of explosives in order to provide emergency lifesaving assistance to civil authorities;

(4) The disposal of excess explosives produced under a DoD contract, if the head of the military department concerned determines, in each case, that an alternative feasible means of disposal is not available to the contractor, taking into consideration public safety, available resources of the contractor, and national defense production requirements;

(5) The temporary storage of nuclear materials or nonnuclear classified materials in accordance with an agreement with the Secretary of Energy;

(6) The storage of materials that constitute military resources intended to be used during peacetime civil emergencies in accordance with applicable DoD regulations;

(7) The temporary storage of materials of other Federal agencies in order to provide assistance and refuge for commercial carriers of such material during a transportation emergency;

(8) The storage of any material that is not owned by DoD, if the Secretary of the military department concerned determines that the material is required or generated by a private person in connection with the authorized and compatible use by that person of an industrial-type DoD facility; or

(9) The treatment and disposal of any non-DoD-owned material if the Secretary of the military department concerned—

(i) Determines that the material is required or generated by a private person in connection with the authorized and compatible commercial use by that person of an industrial-type facility of that military department; and

(ii) Enters into a contract with that person that—

(A) Is consistent with the best interest of national defense and environmental security; and

(B) Provides for that person's continued financial and environmental responsibility and liability with regard to the material.

(b) The Secretary of Defense, where DoD Directive 6050.8 applies, may grant exceptions to the prohibition of 10 U.S.C. 2692 when essential to protect the health and safety of the public from imminent danger.

[58 FR 28466, May 13, 1993, as amended at 60 FR 13076, Mar. 10, 1995; 60 FR 61597, Nov. 30, 1995]

223.7103 Contract clause.

(a) Use the clause at 252.223–7006, Prohibition on Storage and Disposal of Toxic and Hazardous Materials, in all solicitations and contracts which require, may require, or permit contractor performance on a DoD installation.

(b) Use the clause at 252.223–7006 with its Alternate I, when the Secretary of

the military department issues a determination under the exception at 223.7102(a)(9).

[60 FR 13076, Mar. 10, 1995]

Subpart 223.72—Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives

SOURCE: 61 FR 7743, Feb. 29, 1996, unless otherwise noted.

223.7200 Definition.

''Arms, ammunition, and explosives (AA&E),'' as used in this subpart, means those items within the scope (chapter 1, paragraph B) of DoD 5100.76–M, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives.

223.7201 Policy.

(a) The requirements of DoD 5100.76–M, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives, shall be applied to contracts when—

(1) AA&E will be provided to the contractor or subcontractor as Government-furnished property; or

(2) The principal development, production, manufacture, or purchase of AA&E is for DoD use.

(b) The requirements of DoD 5100.76–M need not be applied to contracts when—

(1) The AA&E to be acquired under the contract is a commercial item within the meaning of FAR 2.101; or

(2) The contract will be performed in a Government-owned contractor-operated ammunition production facility. However, if subcontracts issued under such a contract will meet the criteria of paragraph (a) of this section, the requirements of DoD 5100.76–M shall apply.

223.7202 Preaward responsibilities.

When an acquisition involves AA&E, technical or requirements personnel shall specify in the purchase request—

(a) That AA&E is involved; and

(b) Which physical security requirements of DoD 5100.76–M apply.

223.7203 Contract clause.

Use the clause at 252.223–7007, Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives, in all solicitations and contracts to which DoD 5100.76–M applies, in accordance with the policy at 223.7201. Complete paragraph (b) of the clause based on information provided by cognizant technical or requirements personnel.

[61 FR 7743, Feb. 29, 1996; 61 FR 18195, Apr. 24, 1996]

PART 224—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Sec.

Subpart 224.1—Protection of Individual Privacy

224.102 General.
224.103 Procedures.

Subpart 224.2—Freedom of Information Act

224.203 Policy.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36367, July 31, 1991, unless otherwise noted.

Subpart 224.1—Protection of Individual Privacy

224.102 General.

The Act does not apply to—

(1) Systems of records the contractor maintains on its employees; or

(2) The records generated by a State or private educational organization under a contract with the Government to provide training, when the records (admission forms, grade reports) are similar to and commingled with those maintained on other students.

224.103 Procedures.

(b)(2) DoD rules and regulations are contained in DoDD 5400.11, Department of Defense Privacy Program, and DoD 5400.11–R, Department of Defense Privacy Program.

Subpart 224.2—Freedom of Information Act

224.203 Policy.

(a) DoD implementation is in DoDD 5400.7, DoD Freedom of Information Act Program, and DoD 5400.7–R, DoD Freedom of Information Act Program.

[56 FR 36367, July 31, 1991. Redesignated at 62 FR 34122, June 24, 1997]

PART 225—FOREIGN ACQUISITION

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225.7022–2 Exceptions.
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225.7103 Polyacrylonitrile (PAN) carbon fiber.
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Subpart 225.72—Reporting Contract Performance Outside the United States

225.7200 Scope of subpart.
225.7201 Exception.
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Subpart 225.73—Acquisitions for Foreign Military Sales

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225.7303 Pricing acquisitions for foreign military sales.
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225.7308 Contract clauses.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36367, July 31, 1991, unless otherwise noted.

225.000 Scope of part.

This part also provides policy and procedures for—

(1) Purchasing foreign defense supplies, services, and construction materials;

(2) Foreign military sale acquisitions;

(3) Coordinating acquisitions involving work to be performed in foreign countries;

(4) Cooperative programs.

225.000–70 Definitions.

As used in this part—

(a) *Defense equipment* means any equipment, item of supply, component, or end product purchased by the DoD.

(b) *Domestic concern* means a concern incorporated in the United States or an unincorporated concern having its principal place of business in the United States.

(c) *Domestic end product* has the meaning given in the clause at 252.225–7001, Buy American Act and Balance of Payments Program, instead of the meaning in FAR 25.101.

(d) *Foreign concern* means any concern other than a domestic concern.

(e) *Nondesignated country end product* means any end product which is not a U.S. made end product or a designated country end product.

(f) *Nonqualifying country* means a country other than the United States or a qualifying country.

(g) *Nonqualifying country end product* means an end product which is neither a domestic nor qualifying country end product.

(h) *Nonqualifying country offer* means an offer of a nonqualifying country end product, including the price of transportation to destination.

(i) *Qualifying country* is a term used to describe certain countries with memoranda of understanding or international agreements with the United States. These countries are listed in 225.872–1.

(j) *Qualifying country component* and *qualifying country end product* are defined in the clause at 252.225–7001, Buy American Act and Balance of Payments Program.

(k) *Qualifying country offer* means an offer of a qualifying country end product, including the price of transportation to destination.

(l) *Source,* when restricted by such words as foreign, domestic, qualifying country, etc., refers to the actual manufacturer or producer of the end product or component.

(m) *U.S. made end product* is defined in the clause at 252.225–7007, Trade Agreements.

[56 FR 36367, July 31, 1991, as amended at 59 FR 1289, Jan. 10, 1994]

225.000–71 General guidelines.

To apply the policies and procedures of this part, analyze and evaluate offers of foreign end products generally as follows—

(a) *Statutory or policy restrictions.* (1) Determine whether the product is restricted by—

(i) DoD Authorization or Appropriations Acts (see subpart 225.70); or

(ii) DoD policy (see subpart 225.71 and FAR 6.302–3).

(2) Where an exception to or waiver of a restriction would result in award of a foreign end product, apply the policies and procedures of the Buy American Act or the Balance of Payments Program, and, if applicable, the trade agreements.

(b) *Memoranda of understanding or other international agreements.* (1) Determine whether the offered product is the product of one of the countries (qualifying country), listed in 225.872–1.

(2) If the product is the product of a qualifying country, evaluate the offer under 225.105 and 225.872–4.

(c) *Trade agreements.* (1) Determine whether the product is covered by the Trade Agreements Act or the North American Free Trade Agreement Implementation Act (see subpart 225.4).

(2) If the product is an eligible product under subpart 225.4, evaluate the offer under FAR 25.402 and 225.105.

(3) If the product is not an eligible product, a qualifying country end product, or a U.S. made end product, purchase of the foreign end product may be prohibited (see FAR 25.402(c) and 225.402(c)).

(d) *Contractors controlled by terrorist nations.* (1) Determine whether the contractor is controlled by a terrorist nation.

(2) If the contractor is controlled by a terrorist nation, comply with 209.104–1(g).

(e) *Buy American Act and Balance of Payments Program.* See the evaluation procedures in 225.105.

[56 FR 36367, July 31, 1991, as amended at 59 FR 1289, Jan. 10, 1994]

Subpart 225.1—Buy American Act—Supplies

225.102 Policy.

(a)(2) The cost of a domestic end product is unreasonable if it is not the low evaluated offer when evaluated under 225.105.

(3)(A) Specific public interest exceptions for DoD are in 225.872.

(B) Normally, use the evaluation procedures in 225.105, but consider recommending a public interest exception where the purposes of the Buy American Act are not served, or in order to meet a need set forth in 10 U.S.C. 2533. For example, a public interest exception may be appropriate—

(*1*) If accepting the low domestic offer will involve substantial foreign expenditures, or accepting the low foreign offer will involve substantial domestic expenditures;

(*2*) To ensure access to advanced state-of-the-art commercial technology; or

(*3*) To maintain the same source of supply for spare and replacement parts (also see paragraph (b)(iii)(B) of this section)—

(*i*) For an end item that qualifies as an American good; or

(*ii*) In order not to impair integration of the military and commercial industrial base.

(C) A determination whether to grant a public interest exception shall be made after consideration of the factors in 10 U.S.C. 2533—

(*1*) At a level above the contracting officer for acquisitions valued at less than $100,000;

(*2*) By the head of the contracting activity for acquisitions valued at $100,000 or more but less than $1,000,000; or

(*3*) By the agency head for acquisitions valued at $1,000,000 or more.

(b)(i) A determination that an article, material, or supply is not reasonably available is required where no domestic offer is received or when domestic offers are insufficient to meet the requirement and award is to be made on a nonqualifying country end product.

(ii) Except as provided in FAR 25.102(b)(1), the determination must be approved—

(A) At a level above the contracting officer, if the acquisition is estimated not to exceed $25,000;

(B) By the chief of the contracting office if the acquisition is estimated not to exceed $250,000;

(C) By the head of the contracting activity (HCA) or immediate deputy if the acquisition is estimated not to exceed $2 million; or

(D) By the head of the agency, or designee at a level no lower than an HCA, if the acquisition is estimated to exceed $2 million.

(iii) A determination as to whether an article, material, or supply is reasonably available is not required for—

(A) End products or components listed in 225.108(d)(1) or FAR 25.108(d)(1);

(B) Acquisitions for spare/replacement parts when the acquisition is restricted to the original manufacturer or supplier; or

(C) Acquisition of foreign drugs by the Defense Personnel Support Center when the Chief of the Technical Operations Division, Directorate of Medical Materiel, determines that only the requested foreign drug will fulfill the requirements.

(iv) Under coordinated acquisition (see 208.70), the determination is the responsibility of the requiring department when the requiring department specifies acquisition of a foreign end product.

[56 FR 36367, July 31, 1991, as amended at 56 FR 67215, Dec. 30, 1991; 60 FR 34470, July 3, 1995]

225.103 Agreements with certain foreign governments.

See 225.872.

225.105 Evaluating offers.

Use the following procedures instead of those in FAR 25.105.

(1) Evaluate offers by adding a 50 percent factor to the price (including duty) of each nonqualifying country offer (see Example 1 in Table 25–1, Evaluation).

(i) Nonqualifying country offers include duty in the offered price. When applying the factor, evaluate based on the inclusion of duty, whether or not duty is to be exempted. If award is made on the nonqualifying country offer and duty is to be exempted through inclusion of the clause at FAR 52.225–10, Duty-Free Entry, award at the offered price minus the amount of duty identified in the provision at 252.225–7003, Information for Duty-Free Entry Evaluation. See Example 1, Alternate II, in Table 25–1, Evaluation.

(ii) When a nonqualifying country offer includes more than one line item, apply the 50 percent factor—

(A) On an item-by-item basis; or

(B) On a group of items, if the solicitation specifically provides for award on a group basis.

(2) When application of the factor would not result in the award of a domestic end product, e.g., when no domestic offers are received (see Example 3 of Table 25–1, Evaluation) or when a qualifying country offer is lower than the domestic offer (see Example 2 of Table 25–1, Evaluation), evaluate offers without the 50 percent factor.

(i) If duty is to be exempted through inclusion of the clause at FAR 52.225–10, Duty-Free Entry, evaluate the nonqualifying country offer exclusive of duty by reducing the offered price by the amount of duty identified in the clause at 252.225–7003, Information for Duty-Free Entry Evaluation (see Examples 2 and 3, Alternate II, of Table 25–1, Evaluation). If award is made on the nonqualifying country offer, award at the offered price minus duty.

(ii) If duty is not to be exempted and duty is to be paid by the Government, evaluate the nonqualifying country offer inclusive of duty. (See Examples 2 and 3, Alternate I, of Table 25–1, Evaluation.)

(3) Treat offers of eligible products under acquisitions subject to the Trade Agreements Act or NAFTA as if they were qualifying country offers. (See Example 4 of Table 25–1, Evaluation.)

(4) If these evaluation procedures result in a tie between a nonqualifying country offer and a domestic offer, make award on the domestic offer.

(5)(i) There are two tests that must be met to determine whether a manufactured item is a domestic end product—

(A) The end product must have been manufactured in the United States; and

(B) The cost of its U.S. and qualifying country components must exceed 50 percent of the cost of all of its components. This test is applied to end products only, and not to individual components.

(ii) Because of the component test, the definition of ''domestic end product'' is more restrictive than the definition for—

(A) ''U.S. made end product'' under trade agreements;

(B) ''Domestically produced or manufactured products'' under small business set-asides or small business-small purchase set-asides; and

(C) Products of small businesses under FAR part 19.

(iii) If an offer is for a ''U.S. made end product,'' ''domestically produced end product,'' or the product of a small business, but is not a ''domestic end product'' as defined in the clause at 252.225–7001, Buy American Act and Balance of Payments Program, treat the offer as a nonqualifying country offer. (See Example 4 of Table 25–1, Evaluation.)

TABLE 25–1, EVALUATION

Example 1

Alternate I: Duty Not Exempted for Nonqualifying Country Offers:

Nonqualifying Country Offer (including $100 duty)—$6,000

Domestic Offer—$8,900

Qualifying Country Offer—$9,100

Award on Domestic Offer. The 50% evaluation factor is added to the nonqualifying country offer, inclusive of duty, yielding an evaluated price of $9,000.

Alternate II: Duty Exempted:

Nonqualifying Country Offer (including $1,000 duty)—$600,000
Domestic Offer—$910,000
Qualifying Country Offer—$920,000

Award on Nonqualifying Country Offer. The addition of the evaluation factor yields an evaluated price of $900,000. Since duty is being exempted for nonqualifying country offers, the duty is subtracted from the offered price which is awarded at $599,000.

Example 2

Alternate I: Duty Not Exempted for Nonqualifying Country Offers:
Nonqualifying Country Offer (including $100 duty)—$6,000
Domestic Offer—$8,500
Qualifying Country Offer—$7,800

Award on Nonqualifying Country Offer. In this case, the application of the evaluation factor to the nonqualifying country offer results in a price ($9,000) that is higher than the other two offers, but would not result in award of a domestic offer, since the qualifying country offer is lower. Therefore, all offers are evaluated without the factor. Since duty is not being exempted for nonqualifying country offers, the offer is evaluated and award is made at the price inclusive of duty ($6,000).

Alternate II: Duty Exempted:
Nonqualifying Country Offer (including $1,000 duty)—$880,500
Domestic Offer—$950,000
Qualifying Country Offer—$880,000

Award on Nonqualifying Country Offer. Again, the addition of the evaluation factor would not result in the award of a domestic offer and all offers are evaluated without the factor. Since duty is being exempted for nonqualifying country offers, the duty identified by the offeror is subtracted from the offered price, which is evaluated and awarded at $879,500.

Example 3

Alternate I: Duty Not Exempted for Nonqualifying Country Offers:
Nonqualifying Country Offer (including $1,000 duty)—$10,000
Qualifying Country Offer—$9,500

Award on Qualifying Country Offer. Since no domestic offers are received, the foreign offers are evaluated without the evaluation factor. Since duty is not being exempted and would be paid by the Government, the nonqualifying country offer is evaluated inclusive of duty.

Alternate II: Duty Exempted:
Nonqualifying Country Offer (including $1,000 duty)—$880,500
Qualifying Country Offer—$880,000

Award on Nonqualifying Country Offer. Since duty is being exempted, duty is subtracted from the nonqualifying country offer, which is evaluated and awarded at $879,500.

Example 4

Alternate I:
Offer of U.S. Made End Product which is not a Domestic Offer—$800,000
Domestic Offer—$820,000
Eligible Product—$830,000

Award on Domestic End Product. U.S. made end products which are not also domestic end products are evaluated the same as nonqualifying country end products. Adding the 50% evaluation factor yields an evaluated price of $1,200,000.

Alternate II:
Offer of U.S. Made End Product which is not a Domestic Offer—$800,000
Eligible Product—$820,000
Domestic Offer—$830,000

Award on U.S. Made End Product. Adding the 50% evaluation factor to the U.S. made end product would not result in the award of a domestic end product since the eligible product, which is evaluated the same as a qualifying country offer, is lower. All offers are evaluated without the factor.

[56 FR 36367, July 31, 1991, as amended at 59 FR 1289, Jan. 10, 1994]

225.107 Acquisition from or through other Government agencies.

Contracting activities must apply the evaluation procedures in 225.105 when using Federal supply schedules.

225.108 Excepted articles, materials, and supplies.

(a)(i)DoD has determined that the articles, materials, and supplies listed in FAR 25.108(d)(1) and in paragraph (d)(1) of this section, when purchased as end items or components, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. Regard these items or components as being of domestic origin when incorporated in—

(A) An end product or construction material manufactured in the United States; or

(B) A qualifying country end product or construction material. (For construction material, see FAR 25.2.)

(ii) Scrap is domestic in origin if generated in, collected in, and prepared for processing in the United States.

(d)(1) Aluminum clad steel wire. Sperm oil.

225.109 Solicitation provisions and contract clauses.

(a) Use the provision at 252.225–7000, Buy American Act—Balance of Payments Program Certificate, instead of the provisions at FAR 52.225–1, Buy American Certificate, and FAR 52.225–6, Balance of Payments Program Certificate. Use the provision in any solicitation which includes the clause at 252.225–7001, Buy American Act and Balance of Payments Program, unless the solicitation includes either the clause at 252.225–7007, Trade Agreements Act, or the clause at 252.225–7036, North American Free Trade Agreements Implementation Act.

(b) For oral solicitations inform prospective vendors that only domestic and qualifying country end products are acceptable, except nonqualifying country end products are acceptable if—

(i) The items are excepted either on a blanket or an individual basis; or

(ii) The price of the nonqualifying country end product is the low offer under the evaluation procedures in 225.105.

(d) Use the clause at 252.225–7001, Buy American Act and Balance of Payments Program, instead of the clauses at FAR 52.225–3, Buy American Act-Supplies, and FAR 52.225–7, Balance of Payments Program, in solicitations and contracts for supplies or services which require the furnishing of supplies.

(i) Do not use the clause if an exception to the Buy American Act or Balance of Payments Program is known to apply.

(ii) The clause need not be used if nonqualifying country end products are ineligible for award, including—

(A) End products restricted to domestic or domestic and qualifying country sources under Appropriations and Authorization Act restrictions (see 225.70);

(B) End products restricted to domestic or domestic and Canadian sources (see 225.71); and

(C) End products restricted under the authority of FAR 6.302–3.

(iii) The clause may be used if the contracting officer anticipates a waiver of the restrictions in paragraphs (d)(ii) (A) or (B) of this section.

[56 FR 36367, July 31, 1991, as amended at 57 FR 42630, Sept. 15, 1992; 59 FR 1289, Jan. 10, 1994]

225.109–70 Additional provisions and clauses.

(a) Use the clause at 252.225–7002, Qualifying Country Sources as Subcontractors, in all solicitations and contracts that include the clause at 252.225–7001, Buy American Act and Balance of Payments Program.

(b) Use the provision at 252.225–7003, Information for Duty-Free Entry Evaluation, in all solicitations that include the clause at 252.225–7001, Buy American Act and Balance of Payments Program.

(c) When only domestic end products are acceptable, the solicitation must make a statement to that effect.

Subpart 225.2—Buy American Act—Construction Materials

225.202 Policy.

(a)(3) A nonavailability determination is not required for construction materials listed in FAR 25.108(d)(1) or in 225.108(d)(1). For other materials, a nonavailability determination must be approved at the levels specified in 225.102(b)(ii). Use the estimated value of the construction materials to determine the approval level.

[56 FR 36367, July 31, 1991, as amended at 62 FR 34122, June 24, 1997]

Subpart 225.3—Balance of Payments Program

225.302 Policy.

(a) DoD implements the Balance of Payments Program using evaluation factors similar to those which implement the Buy American Act. The Balance of Payments Program restrictions—

(i) Apply to acquisitions for foreign military sales;

(ii) Do not apply to services, except services which primarily involve the acquisition of supplies;

(iii) Do not apply to qualifying country end products; and

(iv) Do not apply to articles, materials, or supplies produced or manufactured in Panama when purchased by and for the use of U.S. forces in Panama.

(b)(i) Before solicitation, the determinations required by FAR 25.302(b)(2) and (3), or a determination that the cost of acquiring domestic end products or services is unreasonable (FAR 25.303(b)), may be made by the following individuals or their immediate deputies—

ARMY

Deputy Chief of Staff for Procurement, U.S. Army Material Command
Commander-in-Chief, U.S. Army, Europe and DCSLOG, U.S. Army, Europe
Commander, Eighth U.S. Army and Chief of Staff, Eighth U.S. Army
Commander, Corps of Engineers Command
Commander, U.S. Army, Japan
Commander, U.S. Army Medical Research and Development Command
Commander, U.S. Army Forces Command
Commander, U.S. Army, South

NAVY

Commander-in-Chief, U.S. Naval Forces, Europe
Commander, U.S. Naval Forces, Japan
Commander, U.S. Naval Forces, Philippines
Commander-in-Chief, U.S. Atlantic Fleet
Commander-in-Chief, U.S. Pacific Fleet
Commander, Military Sealift Command
Commandant, U.S. Marine Corps
Commander, Naval Facilities Engineering Command
Commanding General, III Marine Amphibious Force

AIR FORCE

Commander, U.S. Air Forces in Europe
Commander, Pacific Air Force
Commander, Air Mobility Command
Commander, Air Force Materiel Command
Commander, Air Combat Command
Commander, Air Force Space Command

ADVANCED RESEARCH PROJECTS AGENCY

Director, Contracts Management Office

DEFENSE INFORMATION SYSTEMS AGENCY

Director

DEFENSE LOGISTICS AGENCY

Executive Director, Procurement

DEFENSE MAPPING AGENCY

Deputy Director for Acquisition, Installations, and Logistics

DEPARTMENT OF DEFENSE OFFICE OF DEPENDENTS SCHOOLS

Director

ON-SITE INSPECTION AGENCY

Principal Deputy Director

(ii) The authority to make the determinations required by 225.302(b)(i) may be redelegated below the levels in paragraph (b)(i) for acquisitions estimated at $500,000 or less in foreign cost.

(3)(A) This authority is not intended for use in making repetitive supply acquisitions or acquisitions of total annual supply requirements of items available in the United States but not available within the time required.

(B) DoD has determined that requirements for the items on the lists at FAR 25.108(d)(1) and at 225.108(d)(1) can only be filled by a foreign end product.

(4) DoD has determined the following items can only be acquired or performed in the country concerned—

(A) Maintenance and repair of, and acquisition of spare parts for, foreign-manufactured vehicles, equipment, machinery, and systems; provided, in the case of spare parts, the acquisition is restricted to the original manufacturer or its supplier in accordance with DoD standardization policy (see DoD Directive 4120.3, Defense Standardization and Specification Program);

(B) Industrial gases;

(C) Brand drugs specified by the Defense Medical Materiel Board;

(D) Bulk construction materials: sand, gravel, and other soil materials, stone, concrete masonry units, and fired brick; and

(E) Overhaul and repair of vessels, aircraft, and vehicles which—

(*1*) Are home-ported/stationed/deployed overseas; and

(*2*) Cannot practically return to the United States or to U.S. operated repair facilities.

(F) Ready-mixed asphalt and portland cement concrete, provided that foreign cost is estimated at not more than $100,000.

(c)(i) Purchase of materials, equipment, and supplies for construction overseas shall generally be the responsibility of the contractor performing the work; but where necessary to comply with foreign law, to avoid taxation, or to obtain other advantages, consider

direct purchase. Consider savings that may be obtained by exemptions from import and other taxes and, to the extent economical, take advantage of tax exemptions available under existing agreements.

(ii) When purchase of materials is the responsibility of the construction contractor, the evaluation differential is determined through the estimating process and applied before solicitation.

[56 FR 36367, July 31, 1991, as amended at 56 FR 67215, Dec. 30, 1991; 57 FR 42630, Sept. 15, 1992; 59 FR 27671, May 27, 1994; 60 FR 61597, Nov. 30, 1995]

225.303 Procedures.

(a) *Solicitation of offers.* When soliciting orally, advise vendors that only domestic and qualifying country end products are acceptable unless an exception applies or the price of a domestic end product is unreasonable.

(b) *Evaluation.* (i) Use the evaluation procedures in 225.105 instead of the evaluation procedures in FAR 25.303(b). Treatment of duty may differ when delivery is overseas.

(A) Duty may not be applicable to nonqualifying country offers.

(B) The U.S. Government cannot guarantee the exemption of duty for components or end products imported into foreign countries.

(C) Foreign governments may impose duties, and offers including such duties must be evaluated as offered.

(ii) Where the evaluation procedures in 225.105 result in the award of a nonqualifying country end product, the acquisition of domestic end products is unreasonable or inconsistent with public interest. If no domestic end product offers are received, the determination in FAR 25.302(b)(3) is not required.

225.305 Solicitation provision and contract clause.

225.305–70 Additional clause.

In order to allow accurate reporting, by cognizant accounting and disbursing officers, of foreign and domestic expenditures, use the clause at 252.225–7005, Identification of Expenditures in the United States, in all negotiated contracts over $25,000 where—

(a) For supply contracts, the contract requires end products manufactured or produced in the United States; and

(1) The contractor is a foreign concern; or

(2) The contractor is a domestic concern and the Government will take title outside the United States.

(b) For contracts for construction, repair, and maintenance of real property, or services to be performed outside the United States—

(1) The contractor is a domestic concern; or

(2) The contractor is a foreign concern and the contract requires acquisition of materials, equipment, or services from U.S. sources.

Subpart 225.4—Purchases Under the Trade Agreements Act of 1979

225.401 Definitions.

Caribbean Basin country end product includes petroleum or any product derived from petroleum.

Eligible product means, instead of the definition at FAR 25.401, a designated, NAFTA, or Caribbean Basin country end product in the categories listed in 225.403.70.

[59 FR 1289, Jan. 10, 1994, as amended at 59 FR 23169, May 5, 1994]

225.402 Policy.

(a) To estimate the value of the acquisition, use the total estimated value of end products subject to trade agreement acts (see 225.403–70).

(1) See 225.105 for evaluation of eligible products and U.S. made end products.

(c)(i) Except as provided in paragraphs (c) (ii) and (iii) of this section, do not purchase nondesignated country end products subject to the Trade Agreements Act unless they are NAFTA, Caribbean Basin, or qualifying country end products (see 225.872–1).

(ii) The prohibition in paragraph (c)(i) of this section does not apply when the contracting officer determines that offers of U.S. made, qualifying country, or eligible products from responsive, responsible offerors are either—

(A) Not received; or

(B) Insufficient to fill the Government's requirements. In these cases,

accept all responsive, responsible offers of U.S. made, qualifying country, and eligible products before accepting any other offers.

(iii) National interest waivers under Section 302(b)(2) of the Trade Agreements Act are approved on a case-by-case basis. Except as delegated in paragraphs (c)(iii) (A) and (B) of this section, a request for a national interest waiver shall include supporting rationale and be submitted under department/agency procedures to the Director of Defense Procurement.

(A) The head of the contracting activity may approve a national interest waiver for a purchase by an overseas purchasing activity of products critical to the support of U.S. forces stationed abroad. The waiver must be supported by a written statement from the requiring activity stating that the requirement is critical for the support of U.S. forces stationed abroad.

(B) The Commander, Defense Fuel Supply Center, may approve national interest waivers for purchases of fuel for use by U.S. forces overseas.

[56 FR 36367, July 31, 1991, as amended at 59 FR 1289, Jan. 10, 1994; 59 FR 39974, Aug. 5, 1994; 61 FR 130, Jan. 3, 1996; 61 FR 7744, Feb. 29, 1996]

225.403 Exceptions.

(b) The evaluation preference for small disadvantaged businesses in subpart 219.70 does not displace an offer of an eligible product.

(c)(1)(A) If a department or agency considers an individual acquisition of a product to be indispensable for national security or national defense purposes and appropriate for exclusion from the provisions of FAR subpart 25.4, it may submit a request with supporting rationale to the Director of Defense Procurement (USD(A&T)DP).

(B) The following national security/national defense exceptions do not require approval by USD(A&T)DP—

(*1*) Where purchase from foreign sources is restricted by the DoD annual Appropriations or Authorization Acts (see subpart 225.70) or by the establishment of required sources of supplies and services under FAR part 8.

(*2*) Where competition from foreign sources is restricted under the authority of FAR 6.302–3(a)(2)(i). Provide USD(A&T)DP a copy of the justification for restricting competition in accordance with FAR 25.402(e) and FAR 6.303–1(d).

(*3*) Where competition from foreign sources is restricted under subpart 225.71.

(g)(4) In accordance with Section 8094 of the Fiscal Year 1994 Defense Appropriations Act (Public Law 103–139), the exception for petroleum and any product derived from petroleum does not apply.

[56 FR 36367, July 31, 1991, as amended at 59 FR 23169, May 5, 1994; 60 FR 61597, Nov. 30, 1995; 61 FR 37841, July 22, 1996; 61 FR 50453, Sept. 26, 1996; 62 FR 34122, June 24, 1997]

225.403–70 Products subject to trade agreement acts.

Foreign end products subject to the Trade Agreements Act and NAFTA are those in the following Federal supply groups (FSG). If a product is not in one of the listed groups, the Trade Agreements Act and NAFTA do not apply. The definition of Caribbean Basin country end products in FAR 25.401 excludes those end products which are not eligible for duty-free treatment under 19 U.S.C. 2703(b). However, 225.401 expands the definition of Caribbean Basin country end products to include petroleum and any product derived from petroleum. The list of products has been annotated to indicate those products which are eligible for designated and NAFTA countries, but are not presently eligible for Caribbean Basin countries.

FSG	Category/Description
22	Railway equipment
23	Motor vehicles, trailers, and cycles (except 2350 and buses under 2310)
24	Tractors
25	Vehicular equipment components
26	Tires and tubes
29	Engine accessories
30	Mechanical power transmission equipment
32	Woodworking machinery and equipment
34	Metalworking machinery
35	Service and trade equipment
36	Special industry machinery (except 3690)
37	Agricultural machinery and equipment

FSG	Category/Description
38	Construction, mining, excavating, and highway maintenance equipment
39	Materials handling equipment
40	Rope, cable, chain and fittings
41	Refrigeration and air conditioning equipment
42	Fire fighting, rescue and safety equipment
43	Pumps and compressors
44	Furnace, steam plant and drying equipment (except 4470)
45	Plumbing, heating, and sanitation equipment
46	Water purification and sewage treatment equipment
47	Piping, tubing, hose, and fitting
48	Valves
49	Maintenance and repair shop equipment (except 4920–4927, 4931–4935, 4960)
53	Hardware and abrasives
54	Prefabricated structures and scaffolding
55	Lumber, millwork, plywood, and veneer
56	Construction and building materials
61	Electric wire, and power and distribution equipment
62	Lighting fixtures and lamps
63	Alarm and signal systems
65	Medical, dental, and veterinary equipment and supplies
66	Instruments and laboratory equipment (except aircraft clocks under 6645)—See FAR 25.401 exclusion of certain watches and watch parts for certain Caribbean Basin countries
67	Photographic equipment
68	Chemicals and chemical products
69	Training aids and devices
70	General purpose ADPE, software, supplies, and support equipment
71	Furniture
72	Household and commercial furnishings and appliances
73	Food preparation and serving equipment
74	Office machines, visible record equipment and ADP equipment
75	Office supplies and devices
76	Books, maps, and other publications
77	Musical instruments, phonographs, and home type radios
78	Recreational and athletic equipment
79	Cleaning equipment and supplies
80	Brushes, paints, sealers, and adhesives
81	Containers, packaging and packing supplies (except 8140)
84	Luggage (only 8460)—See FAR 25.401 for exclusion of luggage for Caribbean Basin countries
85	Toiletries
87	Agricultural supplies
88	Live animals
91	Fuels, oils and waxes
93	Nonmetallic fabricated materials
94	Nonmetallic crude materials
96	Ores, minerals, and their primary products
99	Miscellaneous

[56 FR 36367, July 31, 1991, as amended at 59 FR 1289, Jan. 10, 1994; 59 FR 23169, May 5, 1994; 61 FR 37841, July 22, 1996; 62 FR 2615, Jan. 17, 1997]

225.405 Procedures.

(d) The requirements of FAR 25.405(d) do not apply to offshore acquisitions or to Defense Fuel Supply Center post, camp, or station overseas requirements.

225.408 Solicitation provisions and contract clauses.

(a)(1) Use the provision at 252.225–7006, Buy American Act-Trade Agreements-Balance of Payments Program Certificate, instead of the provision at FAR 52.225–8, Buy American Act-Trade Agreements-Balance of Payments Program Certificate, in all solicitations that include the clause at 252.225–7007, Trade Agreements.

(2) Use the clause at 252.225–7007, Trade Agreements, instead of the clause at FAR 52.225–9, Buy American Act—Trade Agreements—Balance of Payments Program. The clause need not be used where purchase from foreign sources is restricted (see 225.403(d)(1)(B)). The clause may be used where the contracting officer anticipates a waiver of the restriction. For procurements by the U.S. Army Corps of Engineers, use the clause with its Alternate I.

(3) Use the provision at 252.225–7035, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate, instead of the provision at FAR 52.225–20, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate, in all solicitations that include the clause at 252.225–7036, North American Free Trade Agreement Implementation Act.

(4)(A) Use the clause at 252.225–7036, North American Free Trade Agreement Implementation Act, instead of the

clause at FAR 52.225–21, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program. The clause need not be used where purchase from foreign sources is restricted (see 225.403(d)(1)(B)). The clause may be used where the contracting officer anticipates a waiver of the restriction.

(B)(i) Use the clause in all solicitations and contracts for the items listed at 225.403–70, when the estimated value is $50,000 or more and the Trade Agreements Act does not apply. Include the clause in solicitations for multiple line items if any line item is subject to NAFTA.

(ii) Use the clause with its Alternate I when the estimated value is between $25,000 and $50,000.

(C) Application of the procedures in 225.402(a) and the acquisition of non-eligible and eligible products under the same solicitation may result in the application of the North American Free Trade Agreement Implementation Act to only some of the items solicited. In such case, indicate in the schedule those items covered by the Act.

[56 FR 36367, July 31, 1991, as amended at 57 FR 42630, Sept. 15, 1992. Redesignated and amended at 59 FR 1289, Jan. 10, 1994; 60 FR 29498, June 5, 1995; 61 FR 16880, Apr. 18, 1996]

Subpart 225.6—Customs and Duties

225.602 Policy.

(1) Section XXII, chapter 98, subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States authorizes duty-free importation of defense supplies.

(2) 19 U.S.C. 1309 authorizes duty-free importation of certain supplies (not including equipment) for vessels or aircraft operated by the United States (see FAR 25.604(b)).

(3) DoD will issue duty-free entry certificates for—

(i) Qualifying country supplies (end products and components) on all defense contracts;

(ii) Eligible products (end products but not components) on defense contracts subject to the Trade Agreements Act or NAFTA; and

(iii) Other foreign supplies, if there is reasonable assurance that the administrative and other costs of processing and controlling the certificates will not exceed the amount of duty that would be paid.

[56 FR 36367, July 31, 1991, as amended at 59 FR 1290, Jan. 10, 1994]

225.603 Procedures.

(1) Issue duty-free entry certificates—

(i) In accordance with the policy in 225.602;

(ii) On contracts containing the clauses in—

(A) FAR 52.225–10, Duty-Free Entry; or

(B) 252.225–7009, Duty-Free Entry—Qualifying Country End Products and Supplies; or

(C) 252.225–7037, Duty-Free Entry—NAFTA Country End Products and Supplies; or

(iii) On other contracts that fall within one of the following categories—

(A) Direct purchases of foreign supplies under a DoD prime contract, whether title passes at point of origin or at destination in the United States; provided, the contract states that the final price is exclusive of duty;

(B) Purchases of foreign supplies by a domestic prime contractor under a cost-reimbursement type contract or by a cost-reimbursement type subcontractor (where no fixed-price prime or fixed-price subcontract intervenes between the purchaser and the Government), whether title passes at point of origin or at destination in the United States. If a fixed-price prime or fixed-price subcontract intervenes, follow the criteria stated in paragraph (1)(iii)(C) of this section; or

(C) Purchases of foreign supplies by a fixed-price domestic prime contractor, a fixed-price subcontractor, or a cost-type subcontractor where a fixed-price prime contract, or fixed-price subcontract intervenes; provided—

(*1*) The fixed-price prime contract and, where applicable, fixed-price subcontract prices are, or are amended to be, exclusive of duty;

(*2*) The supplies so purchased will be delivered to the Government or incorporated in Government-owned property or in an end product to be furnished to the Government, and the duty will be

paid if such supplies or any portion are used for other than the performance of the Government contract or disposed of other than for the benefit of the Government in accordance with the contract terms; and

(*3*) Such acquisition abroad is authorized by the terms of the contract, the subcontract, or by the contracting officer. In any case, follow the procedures required by the clauses in FAR 52.225–10, Duty-Free Entry, and 252.225–7009, Duty-Free Entry—Qualifying Country End Products and Supples, and 252.225–7037, Duty-Free Entry—NAFTA Country End Products and Supplies, to the extent practicable.

(2) Do not issue duty-free entry certificates or exempt duty for end products, components, or supplies already entered into the customs territory of the United States for which duty has already been paid.

(3) If a duty-free entry certificate is issued a contractor under a fixed-price contract based on the contractor's providing a domestic or qualifying country end product, component, or supply, negotiate an equitable reduction in the contract price if the contractor subsequently furnishes a nonqualifying country end product, component, or supply.

(4) Exclude duty from the contract price for end products, components, or supplies that are being accorded duty-free entry.

(5) Except as required under the evaluation procedures in 225.105 for the Buy American Act, do not evaluate duty for items accorded duty-free entry.

(6) Even if duty is evaluated under Subpart 225.1, the supplies may still be authorized duty-free entry if to do so is consistent with the policies in 225.602. However, if the Government will pay a duty, then the cost of the duty must be included in the contract price and evaluated as part of the offer.

(b) *Formal entry and release.* (i) The administrative contracting officer must—

(A) Ensure that prime contractors are aware of and understand any Duty-Free Entry clause requirements. Contractors should understand that failure by them or their subcontractors to include the data required by the clause will result in treatment of the shipment as without benefit of free entry under section XXII, chapter 98, subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States.

(B) Upon receipt of the required notice of purchase of foreign supplies from the contractor or any tier subcontractor—

(*1*) Verify the duty-free entitlement of goods entering under the contract; and

(*2*) Review the prime contract to ensure that performance of the contract requires the foreign supplies (quantity and price) identified in the notice.

(C) Upon receipt of notification from the contractor that it is placing a foreign purchase that was not identified at the time of contract award—

(*1*) Determine whether a reduction in the contract price is required under the clause at FAR 52.225–10, Duty-Free Entry;

(*2*) If so, make an equitable adjustment in the contract price, unless the procuring contracting officer waives this adjustment;

(*3*) Determine the price of the foreign supplies exclusive of duty, and advise the contractor that that amount will be the maximum dollar value of supplies for which duty-free entry certificates will be issued.

(D) Within 20 days after receiving the notification of purchase of foreign supplies, forward the following information in the format indicated to the Commander, DCMAO New York, ATTN Customs Team, DCMDN–GNIC, 207 New York Avenue, Staten Island, NY 10305-5013—

We have received a contractor notification of the purchase of foreign supplies. I have verified that foreign supplies are required for the performance of the contract. If required, the prime contract price has been or will be adjusted.

Prime Contractor Name and Address:

Prime Contractor CAGE Code:

Prime Contract Number plus Delivery Order Number, if applicable:

Total Dollar Value of the Prime Contract or Delivery Order:

Expiration Date of the Prime Contract or Delivery Order:

Foreign Supplier Name and Address:

Number of Subcontract/Purchase Order for Foreign Supplies:

Total Dollar Value of the Subcontract for Foreign Supplies:

Expiration Date of the Subcontract for Foreign Supplies:
CAO Activity Address Number:
ACO Name and Telephone Number:
ACO Code:
Signature:
Title:

(E) If a contract modification results in a change to any data verifying duty-free entitlement previously furnished, forward a revised notification including the changed data to DCMAO New York.

(ii) The responsibility for issuing duty-free entry certificates for foreign supplies purchased under a DoD contract or subcontract rests with the Customs Team, DCMDN–GNIC, DCMAO New York. Upon receipt of import documentation for incoming shipments from the contractor, its agent, or the U.S. Customs Service, DCMAO New York will verify the duty-free entitlement and execute the duty-free entry certificate.

(iii) Upon arrival of foreign supplies at ports of entry, the consignee, generally the contractor or its agent (import broker) for shipments to other than a military installation, will file U.S. Customs Form 7501, 7501A, or 7506, with the District Director of Customs.

(c) *Immediate entry and release.* Importations made in the name of a DoD military facility or being shipped directly to a military facility are entitled to release under the immediate delivery procedure.

(i) A DoD immediate delivery application has been approved and is on file at Customs Headquarters.

(ii) The application is for an indefinite period and is good for all Customs districts, areas, and ports.

[56 FR 36367, July 31, 1991, as amended at 59 FR 1290, Jan. 10, 1994; 60 FR 29498, June 5, 1995; 62 FR 2613, Jan. 17, 1997]

225.604 Exempted supplies.

(b)(i) The term ''supplies''—

(A) Includes articles known as ''stores,'' such as food, medicines, and toiletries, as well as all consumable articles necessary and appropriate for the propulsion, operation, and maintenance of the vessel or aircraft, such as fuel, oil, gasoline, grease, paint, cleansing compounds, solvents, wiping rags, and polishes.

(B) Does not include portable articles necessary and appropriate for the navigation, operation, or maintenance of vessel or aircraft and for the comfort and safety of the persons on board, such as rope, bolts and nuts, bedding, china and cutlery, which are included in the term ''equipment.''

(ii) The duty-free certificate shall be printed, stamped, or typed on the face of Customs Form 7501, or attached, and shall be executed by a duly designated officer or civilian official of the appropriate department or agency in the following form—

(Date)_____

I certify that the acquisition of this material constituted a purchase of supplies by the United States for vessels or aircraft operated by the United States, and is admissible free of duty pursuant to 19 U.S.C. 1309.

(Name)_____
(Title)_____
(Organization)_____

225.605 Contract clause.

(b) The dollar amount in paragraphs (b)(1) and (i)(2) of the FAR 52.225–10 clause may be reduced appropriately in solicitations and contracts of $100,000 or less.

225.605–70 Additional solicitation provisions and contract clauses.

(a) Use the clause at 252.225–7008, Supplies to be Accorded Duty-Free Entry, in all solicitations and contracts when—

(1) Duty-free entry will be granted under the resultant contract; and

(2) The solicitation and contract include the clauses at—

(i) FAR 52.225–10, Duty-Free Entry; or

(ii) 252.225–7009, Duty-Free Entry—Qualifying Country End Products and Supplies.

(b) Use the clause at 252.225–7009, Duty-Free Entry—Qualifying Country End Products and Supplies, in all solicitations and contracts for supplies and in all solicitations and contracts for services involving the furnishing of supplies. Do not use the clause in a contract for supplies for exclusive use outside the United States.

(c) Use the clause at 252.225–7037, Duty-Free Entry—NAFTA Country End Products and Supplies, in all solicitations and contracts for supplies and services when the clause at FAR 52.225–10, Duty-Free Entry, is not used and NAFTA applies (see 225.403–70).

(d) Use the clause at

252.225–7010, Duty-Free Entry—Additional Provisions, in all solicitations and contracts which include the clause at FAR 52.225–10, Duty-Free Entry.

[56 FR 36367, July 31, 1991, as amended at 59 FR 1290, Jan. 10, 1994]

Subpart 225.7—Restrictions on Certain Foreign Purchases

225.702 Restrictions.

See 209.104–1(g)(i) for restrictions on contracting with firms owned or controlled by foreign governments that support terrorism. See 209.104–1(g)(ii) for prohibition on award of a DoD contract under a national security program to an entity controlled by a foreign government when access to proscribed information is required to perform the contract.

[59 FR 51133, Oct. 7, 1994]

225.770 Secondary Arab boycott of Israel.

225.770–1 Restriction.

In accordance with 10 U.S.C. 2410i, do not enter into a prime contract with a foreign person, company, or entity unless it has certified that it does not comply with the secondary Arab boycott of Israel.

[58 FR 28467, May 13, 1993]

225.770–2 Procedures.

For contracts awarded to the Canadian Commercial Corporation (CCC), the CCC will submit a certification from its proposed subcontractor with the other required precontractual material (see 225.870).

[57 FR 53599, Nov. 12, 1992]

225.770–3 Exceptions.

The restriction does not apply to—

(a) Purchases below the small purchase threshold in FAR 13.101;

(b) Contracts for consumable supplies, provisions, or services for the support of the United States or of allied forces in a foreign country; or

(c) Contracts pertaining to any equipment, technology, data, or services for intelligence or classified purposes, or the acquisition or lease thereof in the interest of national security.

[57 FR 53599, Nov. 12, 1992]

225.770–4 Waivers.

The Secretary of Defense may waive the restriction on the basis of national security interests. Waiver requests should be forwarded to the Director of Defense Procurement, OUSD(A&T)DP.

[57 FR 53599, Nov. 12, 1992, as amended at 60 FR 61597, Nov. 30, 1995]

225.770–5 Solicitation provision and contract clause.

Unless an exception applies or a waiver has been granted, use the clause at 252.225–7031, Secondary Arab Boycott of Israel, in all solicitations and contracts.

[57 FR 53599, Nov. 12, 1992]

Subpart 225.8—International Agreements and Coordination

225.801 International agreements.

(1) Treaties and agreements between the U.S. and foreign governments affect both—

(i) The way offers from foreign contractors are evaluated in DoD acquisitions; and

(ii) Performance of DoD contracts in foreign countries.

(2) This subpart covers acquisition policy and procedures based on treaties and international agreements.

(3) Information on specific agreements is available as follows—

(i) Memoranda of understanding (MOU) and other international agreements between the United States and the countries listed in 225.872–1 are maintained in the Office of the Deputy Assistant Secretary of Defense (Procurement) (Foreign Contracting) (703) 697–9351, DSN 227–9351).

(ii) Military Assistance Advisory Groups, Naval Missions, and Joint U.S. Military Aid Groups normally have copies of the agreements applicable to the countries concerned.

(iii) Copies of international agreements covering existing agreements in the United Kingdom of Great Britain and Northern Ireland, Western European countries, North Africa, and in the

Middle East are filed with the U.S. European Command (EUCOM).

(iv) Agreements with countries in the Pacific and Far East are filed with the U.S. Pacific Command (CINCPAC).

225.802 Procedures.

225.802–70 Contracts for performance outside the United States and Canada.

(a) When a purchasing activity anticipates placement of a contract for performance outside the United States or Canada and the contracting activity is not under the command jurisdiction of a unified or specified command for the country involved, the purchasing activity shall maintain liaison with the cognizant contract administration office (CAO) (as specified in DLAH 4105.5) during preaward negotiations and postaward administration. The CAO will provide pertinent information for contract negotiations, effect appropriate coordination, and obtain required approvals for the performance of the contract.

(b) Where the acquisition requires the performance of work in the foreign country by U.S. personnel or a third country contractor, or where the acquisition will require logistics support for contract employees, source inspection, or additional Government employees—

(1) The contracting activity must coordinate with the cognizant contract administration office before contract award.

(2) The contracting officer shall request the following information from the contract administration office—

(i) The applicability of any international agreements to the acquisition;

(ii) Security requirements applicable to the area;

(iii) The standards of conduct required to be observed by the prospective contractor and its employees, and any action that may be taken in the event required standards are not maintained;

(iv) Requirements for use of foreign currencies, including applicability of U.S. holdings of excess foreign currencies;

(v) Availability of logistics support for contractor employees; and

(vi) Information on taxes and duties from which the Government may be exempt.

(3) The contracting officer shall furnish the following information to the contract administration office—

(i) A synopsis of the work to be performed and, if practical, a copy of the solicitation;

(ii) Any contractor logistical support desired in support of U.S. or foreign military sale requirements;

(iii) Contract performance period and estimated contract value;

(iv) Number and nationality of contractor employees and date of planned arrival of contractor personnel;

(v) Contract security requirements; and

(vi) Other pertinent information to effect complete coordination and cooperation.

225.802–71 End user certificates.

Contracting officers considering the purchase of an item from a foreign source may encounter a request for the signing of a certificate to the effect that the Armed Forces of the United States is the end user of the equipment, and that it will not be transferred to third parties without authorization from the Government of the country selling the item. When encountering this situation, refer to DoD Directive 2040.3, End User Certificates, for guidance.

[57 FR 42630, Sept. 15, 1992]

225.870 Contracting with Canadian contractors.

225.870–1 General.

(a) The Canadian Government guarantees to the U.S. Government all commitments, obligations, and covenants of the Canadian Commercial Corporation under any contract or order issued to the Corporation by any contracting activity of the U.S. Government. The Canadian Government has waived notice of any change or modification which may be made, from time to time, in these commitments, obligations, or covenants.

(b) For production planning purposes, Canada is considered to be part of the defense industrial base (see 225.870–2(b)).

(c) Contracts with contractors located in Canada should be awarded to and administered by the Canadian Commercial Corporation, except for—

(1) Negotiated purchases for experimental, developmental, or research work unless the contract is for a project under the Defense Development Sharing Program;

(2) Purchases of unusual or compelling urgency;

(3) Small purchases; or

(4) Purchases made by DoD activities located in Canada.

(d) The Canadian Commercial Corporation, in placing contracts with Canadian or U.S. concerns, uses provisions in the contracts that give DoD the same production rights, data, and information that DoD would obtain in contracts with U.S. concerns.

(e) When contracts are placed with the Canadian Commercial Corporation, the government of Canada will provide the following services, without charge to DoD departments and agencies—

(1) *Contract administration services*, including—

(i) Cost and pricing analysis;

(ii) Industrial security;

(iii) Accountability and disposal of Government property;

(iv) Production expediting;

(v) Compliance with Canadian labor laws;

(vi) Processing termination claims and disposing of termination inventory;

(vii) Customs documentation;

(viii) Processing of disputes and appeals; and

(ix) Such other related contract administration functions as may be required with respect to the Canadian Commercial Corporation contract with the Canadian supplier; and

(2) *Audits*. When required, audits are performed by the Audit Service Group, Supply and Services Canada. Requests for audit on non-Canadian Commercial Corporation contracts should be routed through the cognizant contract administration office of Defense Contract Management Command.

(3) *Inspection*. The Department of National Defence (Canada) provides inspection personnel, services, and facilities, at no charge to DoD departments and agencies (see 225.870–7).

225.870–2 Solicitation of Canadian contractors.

(a) Except for the acquisitions in 225.870–1(c) (1) through (4), include Canadian firms on bidders mailing lists and comparable source lists only at the request of the Canadian Commercial Corporation.

(b) Include Canadian planned producers under the Industrial Readiness Planning Program on bidders mailing lists for their planned items (see FAR 14.205–1).

(c) Send solicitations directly to Canadian firms appearing on the appropriate bidders mailing lists. Send a complete copy of the solicitation and a listing of Canadian firms solicited to the Canadian Commercial Corporation, 11th Floor, 50 O'Connor Street, Ottawa, Ontario, K1A–0S6, Canada.

(d) Furnish a solicitation, if requested, to the Canadian Commercial Corporation even if no Canadian firm is solicited.

(e) Handle small purchases (see FAR part 13) directly with Canadian firms and not through the Canadian Commercial Corporation.

[56 FR 36367, July 31, 1991, as amended at 57 FR 42630, Sept. 15, 1992]

225.870–3 Submission of offers.

(a) As indicated in 225.870–4, the Canadian Commercial Corporation is the prime contractor. To indicate acceptance of offers by individual Canadian companies, the Canadian Commercial Corporation issues a letter, supporting the Canadian offer, containing the following information—

(1) Name of the Canadian offeror;

(2) Confirmation and endorsement of the offer in the name of the Canadian Commercial Corporation; and

(3) A statement that the Corporation shall subcontract 100 percent with the offeror.

(b) When a Canadian offer cannot be processed through the Canadian Commercial Corporation in time to meet the bid-opening requirement or the closing date for receipt of proposals, the Corporation may permit Canadian firms to submit offers directly. The Canadian Commercial Corporation's endorsement of award, however, must be

received by the contracting officer before contract award.

(c) All sealed bids will be submitted by the Canadian Commercial Corporation in terms of U.S. currency. Do not adjust contracts awarded under sealed bidding for losses or gains from fluctuation in exchange rates.

(d) Except for sealed bids, all offers and quotations submitted by the Canadian Commercial Corporation are normally in terms of Canadian currency. The Corporation may, at the time of submitting an offer, elect to quote and receive payment in terms of U.S. currency, in which case the contract shall—

(1) Provide for payment in U.S. currency; and

(2) Shall not be adjusted for losses or gains from fluctuation in exchange rates.

225.870–4 Contracting procedures.

(a) Award individual contracts covering purchases from suppliers located in Canada, except for those in 225.870–1(c)(1) through (4), to the Canadian Commercial Corporation, 11th Floor, 50 O'Connor Street, Ontario, Canada, K1A–0S6.

(b) Direct communication with the Canadian supplier is authorized and encouraged in connection with all technical aspects of the contract; provided, that the Corporation's approval is obtained on any matters involving changes to the contract.

(c) Identify in the contract, the type of currency, i.e., U.S. or Canadian. Contracts that provide for payment in Canadian currency shall quote the contract price in terms of Canadian dollars and shall identify the amount by the initials CN; e.g., $1,647.23CN. The contract shall clearly indicate on its face the U.S./Canadian conversion rate at the time of award and the U.S. dollar equivalent of the Canadian dollar contract amount.

[56 FR 36367, July 31, 1991, as amended at 57 FR 42630, Sept. 15, 1992]

225.870–5 Contract administration.

(a) Assign contract administration in accordance with part 242. When contract administration is performed in Canada by the cognizant contract administration office of the Defense Contract Management Command, the paying office to be named in the contract for disbursement of DoD funds (DoD Department Code: 17-Navy; 21-Army; 57-Air Force; 97-all other DoD components), whether payment is in Canadian or U.S. dollars, shall be: Disbursing Office, Defense Contract Management Area Office, Cleveland 1240 East 9th Street, Anthony J. Celebrezze Federal Building, Cleveland, Ohio 44199.

(b) For cost-reimbursement type contracts—

(1) Audits on contracts with the Canadian Commercial Corporation (CCC) are automatically arranged by the Department of Supplies and Services (DSS), Canada. Audit reports are furnished to DSS. Upon advice from DSS, the CCC will certify the invoice and forward it with SF 1034, Public Voucher, to the administrative contracting officer for further processing and transmittal to the disbursing office.

(2) On contracts placed directly with Canadian firms, the administrative contracting officer requests audits from the Audit Services Bureau (ASB), Ottawa, Ontario, Canada.

(i) Invoices are approved by the ASB/DSS auditor on a provisional basis pending completion of the contract and final audit.

(ii) The ASB/DSS forwards these invoices, accompanied by SF 1034, Public Voucher, to the administrative contracting officer for further processing and transmittal to the disbursing officer.

(iii) ASB/DSS furnishes periodic advisory audit reports directly to the administrative contracting officer.

225.870–6 Termination procedures.

(a) The Canadian Commercial Corporation will continue administering contracts that may be terminated by the U.S. contracting officer.

(b) The Corporation will settle all Canadian subcontracts in accordance with the policies, practices, and procedures of the Canadian Government.

(c) The U.S. agency administering the contract with the Canadian Commercial Corporation shall provide any services required by the Canadian Commercial Corporation, including disposal of inventory, for settlement of any subcontracts placed in the United States.

Settlement of such U.S. subcontracts is made under this regulation.

225.870–7 Acceptance of Canadian supplies.

(a) When contracts placed in Canada, either with the Canadian Commercial Corporation or directly with Canadian suppliers, require contract quality assurance (CQA) and/or acceptance before shipment, CQA and/or acceptance, as applicable, will be performed by the Department of National Defence (Canada), under paragraph 6 of the Letter of Agreement.

(b) Signature by the Department of National Defence (Canada) quality assurance representative on the DoD inspection and acceptance form is satisfactory evidence of acceptance for payment purposes.

225.870–8 Industrial security.

Industrial security for Canada shall be in accordance with the U.S.-Canada Industrial Security Agreement of March 31, 1952, as amended.

225.871 North Atlantic Treaty Organization (NATO) cooperative projects.

225.871–1 Scope.

(a) This section provides guidance on awarding contracts based on NATO cooperative projects.

(b) The authority is 22 U.S.C. 2767 and 10 U.S.C. 2350b.

225.871–2 Definitions.

(a) *Cooperative project* means a jointly managed arrangement—

(1) Described in a written agreement between the parties;

(2) Undertaken to further the objectives of standardization, rationalization, and interoperability of the armed forces of North Atlantic Treaty Organization member countries; and

(3) Providing for—

(i) One or more of the other participants to share with the United States the cost of research and development, testing, evaluation, or joint production (including follow-on support) of certain defense articles;

(ii) Concurrent production in the United States and in another member country of a defense article jointly developed; or

(iii) Acquisition by the United States of a defense article or defense service from another member country.

(b) *Other participant* means a cooperative project participant other than the United States.

225.871–3 General.

(a) Cooperative project authority. (1) Departments or agencies, that have authority to do so, may enter into a cooperative project agreement with NATO or with one or more member countries of that organization under DoD Directive 5530.3, International Agreements.

(2) Under laws and regulations governing the negotiation and implementation of cooperative project agreements, departments and agencies may enter into contracts, or incur other obligations, on behalf of other participants without charge to any appropriation or contract authorization.

(3) Agency heads have authority to solicit and award contracts to implement cooperative projects.

(b) Contracts implementing cooperative projects shall comply with all applicable laws relating to Government acquisition, unless a waiver is granted under 225.871–4. A waiver of certain laws and regulations may be obtained if—

(1) Required by the terms of a written cooperative project agreement;

(2) It will significantly further NATO standardization, rationalization, and interoperability; and

(3) It is approved by the appropriate DoD official.

225.871–4 Statutory waivers.

(a) The Deputy Secretary of Defense may waive for contracts or subcontracts placed outside the United States any provision of law that specifically prescribes—

(1) Procedures for the formation of contracts;

(2) Terms and conditions for inclusion in contracts;

(3) Requirements for, or preferences to be given—

(i) To goods grown, produced, or manufactured in the United States or in U.S. Government-owned facilities; or

(ii) For services to be performed in the United States; or

(4) Requirements regulating the performance of contracts.

(b) There is no authority for waiver of—

(1) Any provision of the Arms Export Control Act (22 U.S.C. 2751);

(2) Any provision of 10 U.S.C. 2304;

(3) The cargo preference laws of the United States, including the Military Cargo Preference Act of 1904 (10 U.S.C. 2631) and the Cargo Preference Act of 1954 (46 U.S.C. 1241(b)); or

(4) Any of the financial management responsibilities administered by the Secretary of the Treasury.

(c) If a waiver is contemplated under the terms of a cooperative project agreement, forward a request for the waiver to the Deputy Secretary of Defense, through the Director of Defense Procurement. The waiver request must include a draft Determination and Findings for signature by the Deputy Secretary of Defense establishing that the waiver is necessary to significantly further NATO standardization, rationalization, and interoperability.

(d) The approval of the Deputy Secretary of Defense must be obtained before committing to make waivers in an agreement or an amendment to an agreement or contract.

225.871–5 Directed subcontracting.

(a) The Director of Defense Procurement may authorize the direct placement of subcontracts with particular subcontractors. Directed subcontracting is not authorized unless specifically addressed in the cooperative project agreement.

(b) In some instances, it may not be feasible to name specific subcontractors at the time the agreement is concluded. The general provisions for work sharing at the prime and subcontractor level, however, must be clearly delineated in the agreement. This will provide the authority necessary to implement such arrangements during the acquisition phase.

(c) The agreement is the authority necessary for including a contractual provision requiring the prime contractor to place certain subcontracts with particular subcontractors. No separate justification and approval during the acquisition process is required.

225.871–6 Disposal of property.

Dispose of property that is jointly acquired by the members of a cooperative project under the procedures established in the agreement or in a manner consistent with the terms of the agreement.

225.871–7 Congressional notification.

(a) Congress must be notified whenever DoD determines to award a prime contract or subcontract to a particular contractor if the determination was not part of the certification made under Section 27(f) of the Arms Export Control Act before finalizing the cooperative agreement.

(1) Departments and agencies must provide a proposed Congressional notice to USD(A&T)DP in sufficient time to forward to Congress before the time of contract award.

(2) The proposed notice shall include the reason why the authority to designate a particular contractor or subcontractor should be used.

(b) Congressional notification is also required each time a statutory waiver is exercised under 225.871–4, if such information was not provided in the certification to Congress before finalizing the cooperative agreement. Exercise of the waiver means a contract award or modification which provides for a statutory exception.

[56 FR 36367, July 31, 1991, as amended at 60 FR 61597, Nov. 30, 1995]

225.872 Contracting with qualifying country sources.

225.872–1 General.

(a) As a result of memoranda of understanding and other international agreements, the DoD has determined it inconsistent with the public interest to apply restrictions of the Buy American Act/Balance of Payments Program to the acquisition of defense equipment which is mined, produced, or manufactured in any of the following countries (referred to in this part as ''qualifying countries'')—

Australia
Belgium
Canada
Denmark
Egypt
Federal Republic of Germany

France
Greece
Israel
Italy
Luxembourg
Netherlands
Norway
Portugal
Spain
Turkey
United Kingdom of Great Britain and Northern Ireland

(b) Individual acquisitions for products of the following qualifying countries may, on a purchase-by-purchase basis, be exempted from application of the Buy American Act and Balance of Payments Program as inconsistent with the public interest—

Austria
Finland
Sweden
Switzerland

(c) The determination in paragraph (a) of this subsection does not limit the authority of the cognizant Secretary to restrict acquisitions to domestic sources or reject an otherwise acceptable offer from a qualifying country source in instances where considered necessary for national defense reasons.

(d) The Secretary of Defense has waived the restrictions of 10 U.S.C. 2534(a) for the acquisition of defense items manufactured in a qualifying country listed in paragraph (a) or (b) of this subsection, in accordance with the provisions of 10 U.S.C. 2534(d)(3).

[56 FR 36367, July 31, 1991, as amended at 57 FR 53599, Nov. 12, 1992; 60 FR 61597, Nov. 30, 1995; 62 FR 34122, June 24, 1997]

225.872–2 Applicability.

(a) This section applies to all acquisitions of supplies except where restricted by—

(1) Provision of U.S. National Disclosure Policy (NDP), DOD Directive 5230.11, Disclosure of Classified Military Information to Foreign Governments and International Organizations;

(2) U.S. defense mobilization base requirements purchased under the authority of FAR 6.302–3(a)(2)(i) except for quantities in excess of that required to maintain the defense mobilization base. This restriction does not apply to Canadian planned producers—

(i) Review individual solicitations to determine whether this restriction applies.

(ii) Information concerning restricted items may be obtained from the Deputy Assistant Secretary of Defense (Industrial Affairs);

(3) Other U.S. laws or regulations (e.g., the annual defense appropriations act); and

(4) U.S. industrial security requirements.

(b) This section does not apply to construction contracts.

[56 FR 36367, July 31, 1991, as amended at 60 FR 61597, Nov. 30, 1995; 62 FR 34123, June 24, 1997]

225.872–3 Solicitation procedures.

(a) Include qualifying country sources on bidders mailing lists and comparable source lists upon their request (see FAR 14.205).

(b) Except for items developed under the U.S./Canadian Development Sharing Program, use the criteria for soliciting and making awards under FAR part 19 for small business concerns without regard to whether there are potential qualifying country sources for the end product. Do not consider an offer of a qualifying country end product if the solicitation is identified for the exclusive participation of small business firms.

(c) Send solicitations directly to qualifying country sources. Solicit Canadian sources through the Canadian Commercial Corporation in accordance with 225.870.

(d) Use international air mail if solicitation destinations are outside the United States and security classification permits such use (see FAR 14.202 and FAR 14.203).

(e) If unusual technical or security requirements preclude the acquisition of otherwise acceptable defense equipment from qualifying country sources, review the need for such requirements. Do not impose unusual technical or security requirements solely for the purpose of precluding the acquisition of defense equipment from qualifying countries.

(f) Do not automatically exclude qualifying country sources from submitting offers because their supplies

have not been tested and evaluated by the department/agency.

(1) Consider the adequacy of qualifying country service testing on a case-by-case basis. Departments or agencies that must limit solicitations to sources whose items have been service tested and evaluated by the department/agency shall consider supplies from qualifying country sources that have been tested and accepted by the qualifying country for service use.

(2) The department/agency may perform a confirmatory test, if necessary.

(3) Apply U.S. test and evaluation standards, policies, and procedures when the department/agency decides that confirmatory tests of qualifying country end products are necessary.

(4) Where it appears that these provisions might adversely delay service programs, obtain the concurrence of the DoD Acquisition Executive, Under Secretary of Defense (Acquisition & Technology), before excluding the qualifying country source from consideration.

(g) Permit industry representatives from a qualifying country to attend symposia, program briefings, prebid conferences (FAR 14.207 and FAR 15.409), and similar meetings that address U.S. defense equipment needs and requirements. When practical, structure these meetings to allow attendance by representatives of qualifying country concerns.

[56 FR 36367, July 31, 1991, as amended at 60 FR 61597, Nov. 30, 1995]

225.872–4 Evaluation of offers.

(a) Qualifying country sources competing for DoD requirements must be responsive to the terms and conditions of DoD solicitations.

(b) Evaluate offers of end products from the qualifying country sources in 225.872–1(a) without application of the 50 percent Buy American Act or Balance of Payments Program evaluation factor, in accordance with 225.105 and 225.303.

(c) Evaluate offers of end products from the qualifying country sources in 225.872–1(b) without application of the 50 percent Buy American Act or Balance of Payments Program evaluation factor. If the offer, as evaluated, is low or otherwise eligible for award, the contracting officer shall request an exemption of the Buy American Act/Balance of Payments Program as inconsistent with the public interest.

(1) To obtain an exemption, process a Determination and Findings for signature—

(i) At a level above the contracting officer, for acquisitions of $25,000 or less;

(ii) By the chief of the contracting office, for acquisitions of $250,000 or less;

(iii) By the head of the contracting activity (HCA), for acquisitions of $2 million or less; or

(iv) By the head of the agency, or designee at a level no lower than an HCA, for acquisitions over $2 million.

(2) The Determination and Findings shall be substantially as follows for end items, or modified as necessary for components—

SERVICE OR AGENCY

Exemption of the Buy American Act/Balance of Payments Program

Determination and Findings

Upon the basis of the following findings and determination which I hereby make in accordance with the provisions of FAR 25.102, acquisition of (*qualifying country—identify country*) (*describe item*) may be made as provided below.

Findings

1. The (*contracting activity*) proposes to purchase under contract number, _____, mined, produced, or manufactured in (*country of origin*). The total estimated cost of this acquisition is _____.

2. The United States Government and the Government of _____ have agreed to remove barriers to procurement at the prime and subcontract level for defense equipment produced in each other's countries insofar as laws and regulations permit.

3. The agreement provides that competitive offers of (*qualifying country*) end products will be evaluated by the Department of Defense without imposing any price differential under the Buy American Act or Balance of Payments Program and without taking applicable U.S. customs and duties into consideration so that (*qualifying country*) items may better compete for sales of defense equipment to the Department of Defense. In addition, the Agreement stipulates that acquisitions of (*qualifying country*) items must fully satisfy Department of Defense requirements for performance, quality, and delivery and shall cost the Department of Defense no more than would comparable U.S. source or

other foreign source defense equipment eligible for award.

4. In order to achieve the above objectives, the solicitation contained the Buy American Act and Balance of Payments Program clause, 252.225–7001. Offers were solicited from other sources and the offer received for (*qualifying country end item*) is found to be otherwise eligible for award.

Determination

Pursuant to the Buy American Act and Balance of Payments Program, I hereby determine that it is inconsistent with the public interest to apply the restrictions of the Buy American Act or the Balance of Payments Program to the proposed offer.

(Date)

[56 FR 36367, July 31, 1991, as amended at 57 FR 42630, Sept. 15, 1992]

225.872–5 Contract administration.

(a) Arrangements exist with some qualifying countries to provide reciprocal contract administration services. Some arrangements are at no cost to either government. To determine whether such an arrangement has been negotiated and what contract administration functions are covered, contact the Deputy Director of Defense Procurement (Foreign Contracting), ((703) 697–9351, DSN 227–9351).

(b) When contract administration services are required on contracts to be performed in qualifying countries, direct the request to the cognizant activity under DLAH 4105.4, section II, part 2 (DoD Directory of Contract Administration Services Components). Contract administration services for DoD subcontracts placed by qualifying country sources in the United States will be arranged by the cognizant activity under DLAH 4105.4, section II, part 2.

(c) The contract administration activity receiving a delegation or secondary delegation shall review the delegation to determine whether any portion of the delegation are covered by memoranda of understanding annexes, and delegate those functions to the appropriate organization in the qualifying country's government.

(d) Information on quality assurance delegations to foreign governments is in subpart 246.4, Government Contract Quality Assurance.

[56 FR 36367, July 31, 1991, as amended at 60 FR 29498, June 5, 1995]

225.872–6 Audit.

(a) Memoranda of understanding with some qualifying countries contain annexes that provide for reciprocal ''no-cost'' audits of contracts and subcontracts (pre- and post-award).

(b) To determine if such an annex is applicable to a particular qualifying country, contact the Deputy Director of Defense Procurement (Foreign Contracting) ((703) 697–9351, DSN 227–9351).

(c) Handle requests for audits in qualifying countries under 215.805–5(c)(1).

(1) Except for the United Kingdom (UK), send the request to the administrative contracting officer at the cognizant activity listed in DLAH 4105.4, section II, part 2 (DoD Directory of Contract Administration Services Components). Send the request for audit from the UK directly to their Ministry of Defence. See section VII, DLAH 4105.4 for guidance.

(2) Send an advance copy of the request to the focal point identified by the Foreign Contracting Directorate, Office of the Director of Defense Procurement.

[56 FR 36367, July 31, 1991, as amended at 60 FR 29498, June 5, 1995]

225.872–7 Industrial security for qualifying countries.

The required procedures for safeguarding classified defense information necessary for the performance of contracts awarded to qualifying country sources are in the DoD Industrial Security Regulation DoD 5220.22–R (implemented for the Army by AR 380–49; for the Navy by OPNAV Instruction 5540.8L; for the Air Force by AFR 205–4; for the Defense Information Systems Agency by DCA Instruction 240–110–8; and for the Defense Mapping Agency by DMA Instruction 5220.22).

[56 FR 36367, July 31, 1991, as amended at 56 FR 67215, Dec. 30, 1991]

225.872–8 Subcontracting with qualifying country sources.

In reviewing contractor subcontracting procedures, the contracting officer shall ensure that the prime contract does not preclude qualifying country sources from competing for subcontracts, except when restricted by national security interest reasons, mobilization base considerations, or applicable U.S. laws or regulations. (See the clause at 252.225–7002, Qualifying Country Sources as Subcontractors.)

225.873 Waiver of United Kingdom commercial exploitation levies.

225.873–1 Policy.

DoD and the Government of the United Kingdom (U.K.) have agreed to waive U.K. commercial exploitation levies and U.S. nonrecurring cost recoupment charges on a reciprocal basis. In order for U.K. levies to be waived, they must be identified and a waiver must be requested before award of the contract or subcontract under which the levies are charged.

[57 FR 53599, Nov. 12, 1992]

225.873–2 Procedures.

(a) Waiver of U.K. levies must be approved by the Government of the U.K. When an offeror or contractor identifies a levy included in an offered or contract price, the contracting officer shall provide written notification to the Defense Security Assistance Agency, Operations Management Division, room 4B740, the Pentagon, Washington, DC 20301–2800, telephone (703) 697–8108, which will request a waiver of the levy from the Government of the U.K. The notification shall include—

(1) Name of the U.K. firm;

(2) Prime contract number;

(3) Description of item for which waiver is being sought;

(4) Quantity being acquired; and

(5) Amount of levy.

(b) Waiver may occur after contract award. Where levies are waived before contract award, the offer will be evaluated without the levy. Where levies are identified but not waived before contract award, the offer will be evaluated inclusive of the levies.

[57 FR 53599, Nov. 12, 1992]

225.873–3 Contract clause.

Use the clause at 252.225–7032, Waiver of United Kingdom Levies, in all solicitations and contracts for supplies—

(a) Where U.K. firms are expected to participate as offerors/prime contractors; or

(b) If a subcontract over $1 million with a U.K. firm is anticipated.

[57 FR 53599, Nov. 12, 1992]

Subpart 225.9—Additional Foreign Acquisition Clauses

225.970 Clause deviations in overseas contracts.

See 201.402(2) for approval authority for clause deviations in overseas contracts with governments of North Atlantic Treaty Organization (NATO) countries or other allies or with United Nations or NATO organizations.

[61 FR 50453, Sept. 26, 1996]

225.971 Correspondence in English.

Use the clause at 252.225–7041, Correspondence in English, in solicitations and contracts when contract performance will be wholly or in part in a foreign country.

[62 FR 34123, June 24, 1997]

225.972 Authorization to perform.

Use the clause at 252.225–7042, Authorization to Perform, in solicitations and contracts when contract performance will be wholly or in part in a foreign country.

[62 FR 34123, June 24, 1997]

Subpart 225.70—Authorization Acts, Appropriations Acts, and Other Statutory Restrictions on Foreign Acquisition

225.7000 Scope of subpart.

(a) This subpart contains restrictions on the acquisition of foreign products and services, imposed by Defense appropriations and authorization acts and other statutes. Refer to the acts to verify current applicability of the restrictions.

(b) Nothing in this subpart affects the applicability of the Buy American Act or Balance of Payments Program.

[56 FR 36367, July 31, 1991, as amended at 62 FR 2856, Jan. 17, 1997]

225.7001 Definitions.

As used in this subpart—

(a) *Bearing components* and *miniature and instrument ball bearings* are defined in the clause at 252.225–7016, Restriction on Acquisition of Ball and Roller Bearings.

(b) *Hand or measuring tools* means those tools listed in Federal supply classifications 51 and 52, respectively.

(c) *Possessions*, as used in the phrase ''United States or its possessions,'' includes Puerto Rico.

(d) *Specialty metals* is defined in the clause at 252.225–7014, Preference for Domestic Specialty Metals.

[61 FR 10899, Mar. 18, 1996, as amended at 61 FR 50453, Sept. 26, 1996]

225.7002–1 Restrictions.

(a) In accordance with Section 9005 of Public Law 102–396, as amended (10 U.S.C. 2241 note, Limitations on Food, Clothing, and Specialty Metals Not Produced in the United States), and Section 8109 of Public Law 104–208, do not acquire supplies consisting in whole or in part of any of the following, that have not been grown or produced in the United States or its possessions—

(1) Food, but this does not restrict acquisition of foods manufactured or processed in the United States or its possessions;

(2) Clothing;

(3) Tents, tarpaulins, or covers;

(4) Cotton and other natural fiber products, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles), but this does not restrict acquisition of cotton or wool reprocessed or reused in the United States or its possessions;

(5) Woven silk or woven silk blends;

(6) Spun silk yarn for cartridge cloth;

(7) Synthetic fabric or coated synthetic fabric, including all textile fibers and yarns that are for use in such fabrics;

(8) Canvas products; or

(9) Any item of individual equipment (Federal Supply Class 8465) manufactured from or containing any of the listed fibers, yarns, fabrics, or materials.

(b) Do not acquire specialty metals, including stainless steel flatware, that were not melted in steel manufacturing facilities located within the United States or its possessions.

(c) Do not acquire hand or measuring tools that were not produced in the United States or its possessions.

[56 FR 36367, July 31, 1991, as amended at 59 FR 27671, May 27, 1994; 62 FR 5780, Feb. 7, 1997; 62 FR 47154, Sept. 8, 1997]

225.7002–2 Exceptions.

Acquisitions in the following categories are not subject to the restrictions in 225.7002–1—

(a) Any of the items in 225.7002–1(a) or (b), if the Secretary concerned, or designee, determines that they cannot be acquired when needed in a satisfactory quality and sufficient quantity grown or produced in the United States or its possessions at U.S. market prices.

(b) Outside the United States—

(1) In support of combat operations;

(2) Perishable foods by activities located outside the United States for their personnel; or

(3) Emergency acquisitions by such activities for their personnel.

(c) Acquisitions by vessels in foreign waters.

(d) Acquisitions of those supplies listed in FAR section 25.108(d)(1), unless the supplies are hand or measuring tools.

(e) Acquisitions not exceeding the simplified acquisition threshold.

(f) Acquisitions of end items incidentally incorporating cotton or wool, for which the estimated value of the cotton or wool is not more than 10 percent of the total price of the end item; provided the estimated value of the cotton or wool does not exceed the simplified acquisition threshold.

(g) Supplies purchased specifically for commissary resale.

(h) Purchases of specialty metals by subcontractors at any tier for programs, except—

(1) Aircraft;

(2) Missile and space systems;

(3) Ships;
(4) Tank-automotive;
(5) Weapons; and
(6) Ammunition.

(i) Purchases of specialty metals and chemical warfare protective clothing when the acquisition furthers an agreement with a qualifying country (see section 225.872).

(j) Purchases of fibers and yarns that are for use in synthetic fabric or coated synthetic fabric (but not the purchase of the synthetic or coated synthetic fabric itself), if such fabric is to be used as a component of an end item that is not a textile product. Examples of textile products, made in whole or in part of fabric, include—

(1) Draperies, floor coverings, furnishings, and bedding (Federal Supply Group 72, Household and Commercial Furnishings and Appliances);

(2) Items made in whole or in part of fabric in Federal Supply Group 83, Textile/leather/furs/apparel/findings/tents/flags, or Federal Supply Group 84, Clothing, Individual Equipment and Insignia;

(3) Upholstered seats (whether for household, office, or other use); and

(4) Parachutes (Federal Supply Class 1670).

[56 FR 36367, July 31, 1991, as amended at 58 FR 28467, May 13, 1993; 59 FR 27671, May 27, 1994; 60 FR 61597, Nov. 30, 1995; 61 FR 50453, Sept. 26, 1996; 62 FR 5780, Feb. 7, 1997; 62 FR 47154, Sept. 8, 1997]

225.7002–3 Contract clauses.

Unless an exception is known to apply—

(a) Use the clause at 252.225–7012, Preference for Certain Domestic Commodities, in all solicitations and contracts which meet or exceed the simplified acquisition threshold.

(b) Use the clause at 252.225–7014, Preference for Domestic Specialty Metals, in all solicitations and contracts over the simplified acquisition threshold that require delivery of an article containing specialty metals. Use the clause with its Alternate I in all solicitations and contracts over the simplified acquisition threshold requiring delivery, for one of the following major programs, of an article containing specialty metals—

(1) Aircraft;
(2) Missile and space systems;
(3) Ships;
(4) Tank-automotive;
(5) Weapons; or
(6) Ammunition.

(c) Use the clause at 252.225–7015, Preference for Domestic Hand or Measuring Tools, in all solicitations and contracts over the simplified acquisition threshold calling for delivery of hand or measuring tools.

[61 FR 50453, Sept. 26, 1996]

225.7003 Restriction on overseas military construction.

For restriction on award of military construction contracts to be performed in the United States territories and possessions in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf, see 236.274(a).

[62 FR 2856, Jan. 17, 1997]

225.7004 Restriction on overseas architect-engineer services.

For restriction on award of architect-engineer contracts to be performed in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Gulf, see 236.602–70.

[62 FR 2857, Jan. 17, 1997]

225.7005 Waiver of certain restrictions.

(a) The Secretary of Defense has waived the restrictions of 10 U.S.C. 2534(a) for the acquisition of defense items manufactured in a qualifying country listed in 225.872–1, in accordance with the provisions of 10 U.S.C. 2534(d)(3).

(b) Where provided for elsewhere in this subpart, the restrictions on certain foreign purchases under 10 U.S.C. 2534(a) may be waived as follows:

(1) The head of the contracting activity may waive the restriction on a case-by-case basis upon execution of a determination and findings that any of the following applies:

(i) The restriction would cause unreasonable dalays.

(ii) United States producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the

United States discriminates against defense items produced in that country.

(iii) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(iv) Satisfactory quality items manufactured in the United States or Canada are not available.

(v) Application of the restriction would result in the existence of only one source for the item in the United States or Canada.

(vi) Application of the restriction is not in the national security interests of the United States.

(vii) Application of the restriction would adversely affect a U.S. company.

(2) The restriction is waived when it would cause unreasonable costs. The cost of the item of U.S. or Canadian origin is unreasonable if it exceeds 150 percent of the offered price, inclusive of duty, of items which are not of U.S. or Canadian origin.

[62 FR 34123, June 24, 1997]

225.7006 Restrictions on construction or repair of vessels in foreign shipyards.

10 U.S.C. 7309 restricts constructing or repairing vessels in foreign shipyards.

(a) Do not award a contract to construct either of the following in a foreign shipyard—

(1) A vessel constructed for any of the armed forces; or

(2) A major component of the hull or superstructure of any such vessel.

(b) Do not overhaul, repair, or maintain in a foreign shipyard, a naval vessel (or any other vessel under the jurisdiction of the Secretary of the Navy) homeported in the United States. This restriction does not apply to voyage repairs.

225.7007 Restriction on acquisition of foreign buses.

225.7007–1 Restriction.

In accordance with 10 U.S.C. 2534 and 225.7005(a), do not acquire a multipassenger motor vehicle (bus) unless it is manufactured in the United States or a qualifying country.

[62 FR 34123, June 24, 1997]

225.7007–2 Applicability.

Apply this restriction if the buses are purchased, leased, rented, or made available under contracts for transportation services.

[60 FR 19533, Apr. 19, 1995]

225.7007–3 Exceptions.

This restriction does not apply in any of the following circumstances:

(a) Buses manufactured in nonqualifying countries are needed for temporary use because buses manufactured in the United States or a qualifying country are not available to satisfy requirements that cannot be postponed. Such use may not, however, exceed the lead time required for acquisition and delivery of buses manufactured in the United States or a qualifying country.

(b) The requirement for buses is temporary in nature. For example, to meet a special, nonrecurring requirement or a sporadic and infrequent recurring requirement, buses manufactured in nonqualifying countries may be used for temporary periods of time. Such use may not, however, exceed the period of time needed to meet the special requirement.

(c) Buses manufactured in nonqualifying countries are available at no cost to the U.S. Government.

(d) The acquisition is for an amount that does not exceed the simplified acquisition threshold.

[62 FR 34123, June 24, 1997]

225.7007–4 Waiver.

The waiver criteria at 225.7005(b) apply to this restriction.

[62 FR 34123, June 24, 1997]

225.7008 Restriction on research and development.

(a) Public Law 92–570 precludes use of DoD appropriations for award to any foreign corporation, organization, person, or entity for research and development in connection with any weapon system or other military equipment if there is a U.S. corporation, organization, person, or entity—

(1) Equally competent; and

(2) Willing to perform at a lower cost.

(b) The statutory restriction in paragraph (a) of this section does not change the rules for selecting research and development contractors in FAR part 35. However, when a U.S. source and a foreign source are equally competent, award to the source that will provide the services at the lower cost.

225.7009 [Reserved]

225.7010 Restriction on certain chemical weapons antidote.

225.7010–1 Restriction.

In accordance with 10 U.S.C. 2534 and defense industrial mobilization requirements (see subpart 208.72), do not acquire chemical weapons antidote contained in automatic injectors, or the components for such injectors, unless the injector or component is manufactured in the United States or Canada by a company that—

(a) Is a producer under the industrial preparedness program at the time of contract award;

(b) Has received all required regulatory approvals; and

(c) Has the plant, equipment, and personnel to perform the contract in the United States or Canada at the time of contract award.

[60 FR 19533, Apr. 19, 1995, as amended at 62 FR 34123, June 24, 1997]

225.7010–2 Exception.

In accordance with 10 U.S.C. 2534(g) and 225.7005(a), the restriction of 225.7010–1 does not apply to the acquisition of quantities of chemical weapons antidote contained in automatic injectors, or the components for such injectors, that exceed the amount needed to maintain the U.S. defense mobilization base (provided such quantity is an economical purchase quantity), if—

(a) The acquisition is for an amount that does not exceed the simplified acquisition threshold; or

(b) The chemical weapons antidote contained in automatic injectors, or the components for such injectors are manufactured in a qualifying country.

[62 FR 34123, June 24, 1997]

225.7010–3 Waiver.

The waiver criteria at 225.7005(b) apply to this restriction.

[62 FR 34123, June 24, 1997]

225.7011 Restriction on Ballistic Missile Defense research, development, test, and evaluation.

225.7011–1 Definitions.

Competent, foreign firm, and U.S. firm have the meanings given in the provision at 252.225–7018, Notice of Prohibition of Certain Contracts with Foreign Entities for the Conduct of Ballistic Missile Defense RDT&E.

[56 FR 36367, July 31, 1991, as amended at 59 FR 27672, May 27, 1994]

225.7011–2 Restriction.

(a) Section 222 of the Defense Authorization Act for FY1988 and 1989 (Pub. L. 100–180) prohibits the award of certain contracts for the conduct of Ballistic Missile Defense (BMD) Program research, development, test, and evaluation (RDT&E), to foreign governments or firms unless the Secretary of Defense certifies to Congress in writing at any time during the applicable fiscal year that work cannot be competently performed by a U.S. firm at a price equal to or less than the price of the foreign government or firm.

(b) For purposes of implementing this section, heads of contracting activities are authorized to make this certification (see 225.7011–3(b)).

(c) Except as provided in 225.7011–3, do not use any funds appropriated to, or for the use of, DoD to enter into or carry out any contract, including any contract awarded as a result of a broad agency announcement, with a foreign government or firm if the contract provides for the conduct of RDT&E in connection with the BMD.

(d) This prohibition is not intended to deny access to foreign expertise when contract performance requires a level of competency unavailable in the United States.

[56 FR 36367, July 31, 1991, as amended at 59 FR 27672, May 27, 1994]

225.7011–3 Exceptions.

This prohibition shall not apply—

(a) To contracts awarded to a foreign government or firm if the contracting officer determines that—

(1) The contract will be performed within the United States;

(2) The contract is exclusively for RDT&E in connection with antitactical ballistic missile systems; or

(3) The foreign government or foreign firm agrees to share a substantial portion of the total contract cost. Consider the foreign share as substantial if it is equitable with respect to the relative benefits to be derived from the contract by the United States and the foreign parties. For example, if the contract is more beneficial to the foreign party, its share of the cost should be correspondingly higher; or

(b) If the head of the contracting activity certifies in writing, before contract award, that a contract for research, development, testing, or evaluation (other than for RDT&E described in paragraph (a)(2) of this subsection) cannot be competently performed by a U.S. firm at a price equal to or less than the price at which the RDT&E would be performed by a foreign government or firm.

225.7011–4 Procedures.

(a) When awarding a prime contract to a foreign government or firm under 225.7011–3(b), the contracting officer or source selection authority, as applicable, shall make a determination that will be the basis for the certification.

(1) The determination must—

(i) Describe the contract effort;

(ii) State the number of proposals solicited and received from both U.S. and foreign firms;

(iii) Identify the proposed awardee and the amount of the contract;

(iv) State that selection of the contractor was based on the evaluation factors contained in the solicitation, or the criteria contained in the broad agency announcement; and

(v) State that the effort cannot be competently performed by a U.S. firm at a price equal to, or less than, the price at which it would be performed by the foreign awardee.

(2) When either a broad agency announcement (BAA) or program research and development announcement (PRDA) is used, or when the determination is otherwise not based on direct competition between foreign and domestic proposals, the determination must not be merely conclusory.

(i) The determination must specifically explain its basis, include a description of the method used to determine the competency of U.S. firms, and describe the cost or price analysis performed.

(ii) Alternately, the determination may contain—

(A) A finding, including the basis for such finding, that the proposal was submitted solely in response to the terms of a BAA or PRDA, or other solicitation document without any technical guidance from the program office; and

(B) A finding, including the basis for such finding, that disclosure of the information in the proposal for the purpose of conducting a competitive acquisition is prohibited.

(b) Forward a copy of the certification (from 225.7011–3(b)) and, as appropriate, the determination or justification and approval (J&A) within 30 days of contract award to the Ballistic Missile Defense Organization, Attn: BMDO/DRI, 7100 Defense Pentagon, Washington, DC 20301–7100, if award is based on—

(1) A determination under paragraph (a) of this subsection;

(2) Other than full and open competition under FAR subpart 6.3; or

(3) An unsolicited proposal under FAR subpart 15.5.

[56 FR 36367, July 31, 1991, as amended at 59 FR 27672, May 27, 1994; 61 FR 50453, Sept. 26, 1996]

225.7011–5 Solicitation provision.

Use the provision at 252.225–7018, Notice of Prohibition of Certain Contracts With Foreign Entities for the Conduct of Ballistic Missile Defense RDT&E, in

all competitively negotiated BMD solicitations for research, development, test, and evaluation, unless foreign participation is otherwise excluded.

[56 FR 36367, July 31, 1991, as amended at 59 FR 27672, May 27, 1994]

225.7012 Restrictions on anchor and mooring chain.

225.7012–1 Restrictions.

(a) Under Public Law 101–511, Section 8041, and similar sections in subsequent Defense appropriations acts, DoD appropriations for fiscal years 1991 and after may not be used to acquire welded shipboard anchor and mooring chain, four inches in diameter and under, unless—

(1) It is manufactured in the United States, including cutting, heat treating, quality control, testing, and welding (both forging and shot blasting process); and

(2) The cost of the components manufactured in the United States exceeds 50 percent of the total cost of components.

(b) Acquisition of welded shipboard anchor and mooring chain, four inches in diameter and under, when used as a component of a naval vessel, is also restricted under 10 U.S.C. 2534(a)(3)(ii). However, the more stringent restriction under 225.7012–1(a) takes precedence.

[61 FR 13107, Mar. 26, 1996]

225.7012–2 Waiver.

The restriction in 225.7012–1(a) may be waived by the Secretary of the Department responsible for acquisition, on a case-by-case basis, where sufficient domestic suppliers are not available to meet DoD requirements on a timely basis and the acquisition is necessary to acquire capability for national security purposes.

(a) Document the waive in a written D&F containing—

(1) The factors supporting the waiver; and

(2) A certification that the acquisition must be made in order to acquire capability for national security purposes.

(b) Provide a copy of the D&F to the House and Senate Committees on Appropriations.

[61 FR 13107, Mar. 26, 1996]

225.7012–3 Contract clause.

Use the clause at 252.225–7019, Restriction on Acquisition of Foreign Anchor and Mooring Chain, in all solicitations and contracts—

(a) Using fiscal year 1991 or later funds; and

(b) Requiring welded shipboard anchor or mooring chain of four inches in diameter or less.

[61 FR 13107, Mar. 26, 1996, as amended at 61 FR 50453, Sept. 26, 1996]

225.7013—225.7014 [Reserved]

225.7015 Restriction on night vision image intensifier tubes and devices.

225.7015–1 Restriction.

In accordance with Pub. L. 101–165 and 101–511, fiscal years 1990 and 1991 funds may not be used to acquire second and third generation night vision image intensifier tubes and devices unless they are manufactured in the United States or Canada.

[58 FR 28467, May 13, 1993]

225.7015–2 Exception.

Second and third generation night vision image intensifier tubes and devices manufactured outside the United States or Canada may be acquired if—

(a) Adequate domestic supplies are not available to meet DoD requirements on a timely basis; and

(b) The Secretary of the Department responsible for the acquisition certifies to the House and Senate Committees on Appropriations that the acquisition of tubes and devices manufactured outside the United States or Canada is necessary in order to acquire capability for national security purposes.

225.7015–3 Contract clause.

Use the clause at 252.225–7024, Restriction on Acquisition of Night Vision Image Intensifier Tubes and Devices, in all solicitations and contracts which—

(a) Use fiscal year 1990 or 1991 funds; and

(b) Require second and third generation night vision image intensifier tubes and devices.

[58 FR 28467, May 13, 1993]

225.7016 Restriction on air circuit breakers for naval vessels.

225.7016–1 Restriction.

In accordance with 10 U.S.C. 2534 and 225.7005(a), do not acquire air circuit breakers for naval vessels unless they are manufactured in the United States or a qualifying country.

[62 FR 34123, June 24, 1997]

225.7016–2 Exceptions.

This restriction does not apply if—

(a) The acquisition is for an amount that does not exceed the simplified acquisition threshold; or

(b) Spare or repair parts are needed to support air circuit breakers manufactured in a nonqualifying country. Support includes the purchase of spare air circuit breakers where those from alternate sources are not interchangeable.

[62 FR 34124, June 24, 1997]

225.7016–3 Waiver.

The waiver criteria at 225.7005(b) apply to this restriction.

[62 FR 34124, June 24, 1997]

225.7016–4 Contract clause.

Use the clause at 252.225–7029, Preference for United States or Canadian Air Circuit Breakers, in all solicitations and contracts requiring air circuit breakers for naval vessels, unless—

(a) An exception under 225.7016–2 is known to apply; or

(b) A waiver has been granted in accordance with 225.7016–3.

[60 FR 19534, Apr. 19, 1995]

225.7017 Restriction on carbon, alloy, and armor steel plate.

225.7017–1 Restriction.

In accordance with section 8111 of Pub. L. 102–172, and similar sections in subsequent appropriations acts, all carbon, alloy, and armor steel plate in Federal stock class 9515 or described by American Society for Testing Materials (ASTM) or American Iron and Steel Institute (AISI) specifications, purchased by the Government or a contractor for use in a Government-owned facility or in a facility controlled (e.g., leased) by DoD, shall be melted and rolled in the United States or Canada.

[58 FR 28468, May 13, 1993]

225.7017–2 Exceptions.

This restriction does not apply to—

(a) Contracts in effect as of November 26, 1991;

(b) Direct purchases by DoD using other than fiscal year 1992 or subsequent year funds; or

(c) Purchases by contractors unless the prime contract uses fiscal year 1992 or subsequent year funds.

[58 FR 28468, May 13, 1993]

225.7017–3 Waiver.

The restriction may be waived by the Secretary of the department responsible for acquisition, on a case-by-case, by certifying to the House and Senate Committees on Appropriations that—

(a) Adequate U.S. or Canadian supplies are not available to meet DoD requirements on a timely basis; and

(b) The acquisition must be made in order to acquire capability for national security purposes.

[57 FR 14994, Apr. 23, 1992]

225.7017–4 Contract clause.

Unless an exception under 225.7017–2 is known to apply or a waiver has been granted in accordance with 225.7017–3, use the clause at 252.225–7030, Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate, in all solicitations and contracts which—

(a) Require the delivery to the Government of carbon, alloy, or armor steel plate which will be used in a facility owned by the Government or under the control of DoD; or

(b) Require contractors operating in a Government-owned facility or a facility under the control of DoD to purchase carbon, alloy, or armor steel plate.

[57 FR 14994, Apr. 23, 1992, as amended at 57 FR 53600, Nov. 12, 1992]

225.7018 Restriction on four ton dolly jacks.

225.7018–1 Restriction.

In accordance with section 9108 of Public Law 102–396, no fiscal year 1993 funds shall be used to procure four ton dolly jacks manufactured outside the United States.

[59 FR 27672, May 27, 1994]

225.7018–2 Waiver.

The restriction is 225.7018–1 may be waived on a case-by-case basis where the Secretary of the Military Department or the Under Secretary of Defense (Acquisition & Technology) certifies to the Committees on Appropriations of the House and Senate that—

(a) Adequate domestic supplies are available to meet requirements on a timely basis; and

(b) The acquisition must be made in order to acquire capability for national security purposes.

[58 FR 28468, May 13, 1993, as amended at 60 FR 61597, Nov. 30, 1995]

225.7018–3 Contract clause.

Use the clause at section 252.225–7033, Restriction on Acquisition of Four Ton Dolly Jacks, in solicitations and contracts that use fiscal year 1993 funds for the acquisition of four ton dolly jacks.

[59 FR 27672, May 27, 1994]

225.7019 Restrictions on ball and roller bearings.

225.7019–1 Restrictions.

(a) In accordance with 10 U.S.C. 2534 and 225.7005(a), through fiscal year 2000, do not acquire ball and roller bearings or bearing components that are not manufactured in the United States or a qualifying country.

(b) In accordance with Section 8099 of Public Law 104–61 and similar sections in subsequent Defense appropriations acts, do not use fiscal year 1996 or subsequently appropriated funds to acquire ball and roller bearings other than those produced by a domestic source and of domestic origin, i.e., bearings and bearing components manufactured in the United States or Canada.

[61 FR 10900, Mar. 18, 1996, as amended at 61 FR 58489, Nov. 15, 1996; 62 FR 34124, June 24, 1997]

225.7019–2 Exceptions.

(a) The restriction in 225.7019–1(a) does not apply to—

(1) Acquisitions using simplified acquisition procedures, unless ball or roller bearings or bearing components are the end items being purchased;

(2) Purchases of commercial items incorporating ball or roller bearings;

(3) Miniature and instrument ball bearings when necessary to meet urgent military requirements;

(4) Items acquired overseas for use overseas; or

(5) Ball and roller bearings or bearing components or items containing bearings for use in a cooperative or co-production project under an international agreement. This exception does not apply to miniature and instrument ball bearings.

(b) The restriction in 225.7019–1(b) does not apply to contracts for acquisition of commercial items or subcontracts for acquisition of commercial items or subcontracts for acquisition of commercial items or commercial components (see 212.503(a)(xi) and 212.504(a)(xxxvi)).

[61 FR 50453, Sept. 26, 1996]

225.7019–3 Waiver.

(a) The head of the contracting activity may waive the restriction in 225.7019–1(a)—

(1) Upon execution of a determination and findings that—

(i) No domestic (U.S. or Canadian) bearing manufacturer meets the requirement;

(ii) It is not in the best interests of the United States to qualify a domestic bearing to replace a qualified nondomestic bearing. This determination must be based on a finding that the qualification of a domestically manufactured bearing would cause unreasonable costs or delay. A finding that a cost is unreasonable should take into consideration DoD policy to assist the domestic industrial mobilization base.

Contracts should be awarded to domestic bearing manufacturers to increase their capability to reinvest and become more competitive;

(iii) United States producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country;

(iv) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country;

(v) Application of the restriction would result in the existence of only one source for the item in the United States or Canada;

(vi) Application of the restriction is not in the national security interests of the United States; or

(vii) Application of the restriction would adversely affect a U.S. company.

(2) If the acquisition is for an amount less than the simplified acquisition threshold and simplified acquisition procedures are being used.

(3) For multiyear contracts or contracts exceeding 12 months, except those for miniature and instrument ball bearings, only if—

(i) The head of the contracting activity executes a determination and findings in accordance with paragraph (a) of this subsection;

(ii) The contractor submits a written plan for transitioning from the use of nondomestic to domestically manufactured bearings;

(iii) The plan—

(A) States whether a domestically manufactured bearing can be qualified, at a reasonable cost, for use during the course of the contract period;

(B) Identifies any bearings that are not domestically manufactured, their application, and source of supply; and

(C) Describes, including cost and timetable, the transition to a domestically manufactured bearing. (The timetable for the transition should normally take no longer than 24 months from the date the waiver is granted); and

(iv) The contracting officer accepts the plan and incorporates it in the contract.

(4) For miniature and instrument ball bearings, only if the contractor agrees to acquire a like quantity and type of domestic manufacture for nongovernmental use.

(b) The Secretary of the department responsible for the acquisition may waive the restriction in 225.7019–1(b) on a case-by-case basis, by certifying to the House and Senate Committees on Appropriations that—

(1) Adequate domestic supplies are not available to meet DoD requirements on a timely basis; and

(2) The acquisition must be made in order to acquire capability for national security purposes.

[61 FR 10900, Mar. 18, 1996, as amended at 61 FR 50453, Sept. 26, 1996; 62 FR 34124, June 24, 1997]

225.7019–4 Contract clause.

Use the clause at 252.225–7016, Restriction on Acquisition of Ball and Roller Bearings, in all solicitations and contracts, unless—

(a) The restrictions in 225.7019–1 do not apply or a waiver has been granted; or

(b) The contracting officer knows that the items being acquired do not contain ball or roller bearings.

[61 FR 10900, Mar. 18, 1996]

225.7020 [Reserved]

225.7021 Restriction on aircraft fuel cells.

225.7021–1 Restriction.

In accordance with section 8090 of the Fiscal Year 1994 Defense Appropriations Act (Pub. L. 103–139) and section 8075 of the Fiscal Year 1995 Defense Appropriations Act (Pub. L. 103–335), do not purchase aircraft fuel cells unless they are produced or manufactured in the United States by a domestic-operated entity.

[60 FR 29498, June 5, 1995]

225.7021–2 Waiver.

The restriction may be waived by the Secretary of the department responsible for the acquisition, on a case-by-case basis, by certifying to the House and Senate Committees on Appropriations that—

(a) Adequate U.S. supplies are not available to meet requirements on a timely basis; and

(b) The acquisition must be made in order to acquire capability for national security purposes.

[59 FR 11729, Mar. 14, 1994]

225.7021–3 Contract clause.

Unless a waiver has been granted in accordance with 225.7021–2, use the clause at 252.225–7038, Restriction on Acquisition of Aircraft Fuel Cells, in all solicitations and contracts which—

(a) Use fiscal year 1994 or 1995 funds; and

(b) Require delivery of aircraft fuel cells.

[60 FR 29498, June 5, 1995]

225.7022 Restrictions on totally enclosed lifeboat survival systems.

225.7022–1 Restrictions.

(a) In accordance with Section 8124 of the Fiscal Year 1994 Defense Appropriations Act (Public Law 103–139) and Section 8093 of the Fiscal Year 1995 Defense Appropriations Act (Public Law 103–335), do not purchase a totally enclosed lifeboat survival system, which consists of the lifeboat and associated davits and winches, unless 50 percent or more of the components are manufactured in the United States, and 50 percent or more of the labor in the final manufacture and assembly of the entire system is performed in the United States.

(b) In accordance with 10 U.S.C. 2534(a)(3)(B) and 225.7005(a), do not purchase a totally enclosed lifeboat that is a component of a naval vessel, unless it is manufactured in the United States or a qualifying country. In accordance with 10 U.S.C. 2534(h), this restriction may not be implemented through the use of a contract clause or certification. Implementation shall be effected through management and oversight techniques that achieve the objective of the restriction without imposing a significant management burden on the Government or the contractor involved.

[61 FR 13107, Mar. 26, 1996, as amended at 62 FR 34124, June 24, 1997]

225.7022–2 Exceptions.

The restriction in 225.7022–1(b) does not apply if—

(a) The acquisition is for an amount that does not exceed the simplified acquisition threshold; or

(b) Spare or repair parts are needed to support totally enclosed lifeboats manufactured in a nonqualifying country.

[62 FR 34124, June 24, 1997]

225.7022–3 Waiver.

The waiver criteria at 225.7005(b) apply only to the restriction of 225.7022–1(b).

[62 FR 34124, June 24, 1997]

225.7022–4 Contract clause.

Use the clause at 252.225–7039, Restriction on Acquisition of Totally Enclosed Lifeboat Survival Systems, in all solicitations and contracts which require delivery of totally enclosed lifeboat survival systems.

[61 FR 13107, Mar. 26, 1996]

225.7023 Restriction on supercomputers.

225.7023–1 Restriction.

In accordance with section 8112 of Pub. L. 100–202, and similar sections in subsequent Defense Appropriations Acts, do not purchase any supercomputer that is not manufactured in the United States.

[60 FR 34471, July 3, 1995, as amended at 60 FR 61597, Nov. 30, 1995]

225.7023–2 Waiver.

The restriction in 225.7023–1 may be waived by the Secretary of Defense on a case-by-case basis, after the Secretary of Defense certifies to the Armed Services and Appropriations Committees of Congress that—

(a) Adequate U.S. supplies are not available to meet requirements on a timely basis; and

(b) The acquisition must be made in order to acquire capability for national security purposes.

[60 FR 34471, July 3, 1995]

225.7023–3 Contract clause.

Use the clause at 252.225–7011, Restriction on Acquisition of Supercomputers, in solicitations and contracts for the acquisition of supercomputers.

[60 FR 34471, July 3, 1995, as amended at 60 FR 61597, Nov. 30, 1995]

Subpart 225.71—Other Restrictions on Foreign Acquisition

SOURCE: 62 FR 34124, June 24, 1997, unless otherwise noted.

225.7100 Scope of subpart.

This subpart contains foreign product restrictions which are based on policies designed to protect the defense industrial base.

225.7101 Definitions.

Relevant definitions are in the clause at 252.225–7025, Restriction on Acquisition of Forgings.

225.7102 Forgings.

225.7102–1 Policy.

DoD requirements for the following forging items, whether as end items or components, shall be acquired from domestic sources (as described in the clause at 252.225–7025) to the maximum extent practicable—

Items	Categories
Ship propulsion shafts	Excludes service and landing craft shafts.
Periscope tubes	All.
Ring forgings for bull gears	All greater than 120 inches in diameter.

225.7102–2 Exceptions.

The policy in 225.7102–1 does not apply to acquisitions—

(a) Using simplified acquisition procedures, unless the restricted item is the end item being purchased;

(b) Overseas for overseas use; or

(c) When the quantity acquired exceeds the amount needed to maintain the U.S. defense mobilization base (provided such quantity is an economical purchase quantity). The restriction to domestic sources does not apply to the quantity above that required to maintain the base, in which case, qualifying country sources may compete.

225.7102–3 Waiver.

Upon request from a prime contractor, the contracting officer may waive the requirement for domestic manufacture of the items covered by the policy in 225.7102–1.

225.7102–4 Contract clause.

(a) Use the clause at 252.225–7025, Restriction on Acquisition of Forgings, in solicitations and contracts, except for acquisitions—

(1) Excepted in 225.7102–2; or

(2) Where the contracting officer knows that the supplies being acquired do not contain the restricted items.

(b) If an exception under 225.7102–2 applies to any portion of the acquisition, specify the exception in the solicitation and contract.

225.7103 Polyacrylonitrile (PAN) carbon fiber.

225.7103–1 Policy.

All new major systems must use U.S. or Canadian manufacturers or producers for all PAN carbon fiber requirements.

225.7103–2 Waivers.

Contracting officers may, with the approval of the chief of the contracting office, waive, in whole or in part, the requirement of the clause at 252.225–7022. For example, a waiver may be justified if a qualified U.S. or Canadian source cannot meet scheduling requirements.

225.7103–3 Contract clause.

Use the clause at 252.225–7022, Restriction on Acquisition of Polyacrylonitrile (PAN) Carbon Fiber, in all acquisitions for major systems (as defined in FAR part 2) that are not yet in production (milestone III as defined in DoD 50002.2–R, Mandatory Procedures for Major Defense Acquisition

Programs (MDAPS) and Major Automated Information system (MAIS) Acquisition Programs). Also use the clause in contracts for major systems if the clause was used in prior program contracts.

Subpart 225.72—Reporting Contract Performance Outside the United States

SOURCE: 58 FR 28469, May 13, 1993, unless otherwise noted.

225.7200 Scope of subpart.

This subpart prescribes procedures for contractor reporting and DoD monitoring of the volume, type, and nature of contract performance outside the United States, to include subcontracts, purchases, and intracompany transfers. It implements 10 U.S.C. 2410g which requires advance notification of contract performance outside the United States and Canada when the contract could have been performed inside the United States or Canada.

225.7201 Exception.

This subpart does not apply to contracts for commercial items, construction, ores, natural gas, utilities, petroleum products and crudes, timber (logs), or subsistence.

[60 FR 61597, Nov. 30, 1995]

225.7202 Distribution of reports.

The contracting officer shall forward a copy of reports submitted by successful offerors as required by the clause at 252.225–7026, Reporting of Contract Performance Outside the United States, to the Deputy Director of Defense Procurement (Foreign Contracting), OUSD(A&T)DP(FC), Washington, DC 20301–3060. This is necessary to satisfy the requirement of 10 U.S.C. 2410g that the notifications (or copies) be maintained in compiled form for five years after the date of submission.

[58 FR 28469, May 13, 1993, as amended at 60 FR 29499, June 5, 1995]

225.7203 Contract clause.

Except for acquisitions in 225.7201, use the clause at 252.225–7026, Reporting of Contract Performance Outside the United States, in all solicitations and contracts with an estimated or actual value exceeding $500,000, including those modified to exceed $500,000.

Subpart 225.73—Acquisitions for Foreign Military Sales

225.7300 Scope of subpart.

(a) This subpart contains policies and procedures for acquisitions for foreign military sales (FMS) under the Arms Export Control Act. Section 22 of the Arms Export Control Act (Pub. L. 90–629, as amended) authorizes DoD to enter into contracts for resale to foreign countries or international organizations.

(b) This subpart does not apply to—

(1) Foreign military sales made from inventories or stocks;

(2) Acquisitions for replenishment of inventories or stocks;

(3) Acquisitions made under DoD cooperative logistic supply support arrangements.

225.7301 General.

(a) The U.S. Government sells defense articles and services to foreign governments or international organizations through foreign military sales (FMS) agreements. The agreement is documented on a DD Form 1513, DoD Offer and Acceptance. The DD Form 1513—

(1) Lists the items and services, estimated costs, and terms and conditions of the sale;

(2) Is presented to the foreign customer; and

(3) Provides for signature of the foreign customer to indicate acceptance.

(b) Acquisitions for FMS are conducted under the same acquisition and contract management procedures as other defense acquisitions.

(c) Solicitations shall separately identify known FMS requirements and the FMS customer.

(d) Contracts for known FMS requirements shall clearly be marked ''FMS requirement'' on the face of the contract along with the FMS customer and the case identifier code.

225.7302 Procedures.

On FMS programs that will require an acquisition, the contracting officer

assists the departmental/agency activity responsible for preparing the DoD Offer and Acceptance by—

(a) Working with prospective contractors to—

(1) Identify, in advance of the DoD Offer and Acceptance, any unusual provisions or deviations.

(2) Advise the contractor if the departmental/agency activity expands, modifies, or does not accept any requirements proposed by the contractor;

(3) Identify any logistics support necessary to perform the contract; and

(4) For acquisitions over $10,000 that are to be awarded noncompetitively, asking the prospective contractor(s) for information on price, delivery, and other relevant factors. The request for information must identify the fact that the information is for a potential foreign military sale and must identify the foreign customer.

(b) Working with the departmental/agency activity responsible for preparing the DoD Offer and Acceptance to—

(1) Assist, as necessary, in preparation of the DD Form 1513;

(2) Identify and explain all unusual contractual requirements or requests for deviations; and

(3) Assist in preparing the price and availability data.

[56 FR 36367, July 31, 1991, as amended at 62 FR 2617, Jan. 17, 1997]

225.7303 Pricing acquisitions for foreign military sales.

Price FMS contracts using the same principles as are used in pricing other defense contracts. Application of the pricing principles in FAR parts 15 and 31 to an FMS contract, however, may result in prices that differ from other defense contract prices for the same item due to the considerations in this section.

[56 FR 36367, July 31, 1991, as amended at 61 FR 50453, Sept. 26, 1996]

225.7303–1 Contractor sales to other foreign customers.

If the contractor has made sales of the item required for the foreign military sale to foreign customers under comparable conditions, including quantity and delivery, price the FMS contract in accordance with FAR part 15.

225.7303–2 Cost of doing business with a foreign government or an international organization.

(a) In pricing FMS contracts where non-U.S. Government prices as described in 225.7303–1 do not exist, except as provided in 225.7303–5, recognize the reasonable and allocable costs of doing business with a foreign government or international organization, even though such costs might not be recognized in the same amounts in pricing other defense contracts. Examples of such costs include, but are not limited to—

(1) Selling expenses (not otherwise limited by FAR part 31), e.g.—

(i) Maintaining international sales and service organizations;

(ii) Sales commissions and fees in accordance with FAR subpart 3.4;

(iii) Sales promotions, demonstrations, and related travel for sales to foreign governments. Paragraph 126.8 of the International Traffic in Arms Regulations (ITAR) (22 CFR part 121) may require Government approval for these costs to be allowable. If Government approval is required for promotion or demonstration costs to be allowable, the approval must be obtained.

(iv) Configuration studies and related technical services undertaken as a direct selling effort to a foreign country.

(2) Product support and post-delivery service expenses, such as—

(i) Operations or maintenance training, training or tactics films, manuals, or other related data; and

(ii) Technical field services provided in a foreign country related to accident investigations, weapon system problems, operations/tactics enhancement, and related travel to foreign countries.

(3) Offset implementation costs.

(i) A U.S. defense contractor may recover costs incurred to implement its offset agreement with a foreign government or international organization if the foreign military sale Letter of Offer and Acceptance is financed wholly with customer cash or repayable foreign military finance credits.

(ii) The U.S. Government assumes no obligation to satisfy or administer the offset requirement or to bear any of the associated costs.

(4) Costs that are the subject of advance agreement under the appropriate provisions of FAR part 31; or where the advance understanding places a limit on the amounts of cost that will be recognized as allowable in defense contract pricing, and the agreement contemplated that it will apply only to DoD contracts for the U.S. Government's own requirement (as distinguished from contracts for FMS).

(b) Costs not allowable under FAR part 31 are not allowable in pricing foreign military sale contracts, except as noted in paragraph (c) of this subsection.

(c) The provisions of 10 U.S.C. 2372 do not apply to contracts for foreign military sales. Therefore, the cost limitations on independent research and development and bid and proposal (IR&D/B&P) costs in FAR 31.205–18 do not apply to such contracts, except as provided in 225.7303–5. The allowability of IR&D/B&P costs on contracts for foreign military sales not wholly paid for from funds made available on a nonrepayable basis shall be limited to the contract's allocable share of the contractor's total IR&D/B&P expenditures. In pricing contracts for such foreign military sales—

(1) Use the best estimate of reasonable costs in forward pricing.

(2) Use actual expenditures, to the extent that they are reasonable, in determining final cost.

(d) Under section 21(e)(1)(A) of the Arms Export Control Act, as amended, the United States must charge for administrative services to recover the estimated cost of administration of sales made under the Arms Export Control Act.

[56 FR 36367, July 31, 1991, as amended at 56 FR 67216, Dec. 30, 1991; 57 FR 42631, Sept. 15, 1992; 57 FR 53600, Nov. 12, 1992; 59 FR 50511, Oct. 4, 1994; 61 FR 7744, Feb. 29, 1996; 61 FR 18987, Apr. 30, 1996]

225.7303–3 Government-to-government agreements.

If a government-to-government agreement between the United States and a foreign government for the sale, coproduction, or cooperative logistic support of a specifically defined weapon system, major end item, or support item, contains language in conflict with the provisions of this section, the language of the government-to-government agreement prevails.

225.7303–4 Contingent fees.

(a) Contingent fees are allowable under defense contracts provided that the fees are paid to a bona fide employee or a bona fide established commercial or selling agency maintained by the prospective contractor for the purpose of securing business (see FAR part 31 and FAR subpart 3.4). For FMS, it is extremely difficult for DoD to verify the services, or the value of the services. Therefore, the cost of allowable contingent fees (as defined in FAR subpart 3.4) is limited to $50,000.

(b) Under DoD 5105.38–M, Security Assistance Management Manual, Letters of Offer and Acceptance for requirements for the governments of Australia, Taiwan, Egypt, Greece, Israel, Japan, Jordan, Republic of Korea, Kuwait, Pakistan, Philippines, Saudi Arabia, Turkey, Thailand, or Venezuela (Air Force) must provide that all U.S. Government contracts resulting from the Letters of Offer prohibit the payment of contingent fees unless the payments have been identified and payment approved in writing by the foreign customer before contract award. (See 225.7308(a).)

[62 FR 2617, Jan. 17, 1997]

225.7303–5 Aquisitions wholly paid for from nonrepayable funds.

(a) In accordance with 22 U.S.C. 2762(d), foreign military sales wholly paid for from funds made available on a nonrepayable basis shall be priced on the same costing basis with regard to profit, overhead, IR&D/B&P, and other costing elements, as is applicable to acquisitions of like items purchased by DoD for its own use.

(b) Direct costs associated with meeting a foreign customer's additional or unique requirements will be allowable under such contracts. Indirect burden rates applicable to such direct costs shall be permitted at the same rates applicable to acquisitions of like items purchased by DoD for its own use.

(c) A U.S. defense contractor may not recover costs incurred to implement its offset agreement with a foreign government or international organization if

the foreign military sale Letter of Offer and Acceptance is financed with funds made available on a nonrepayable basis.

[61 FR 18988, Apr. 30, 1996; 61 FR 49531, Sept. 20, 1996]

225.7304 Source selection.

(a) FMS customers may request that a defense article or defense service be obtained from a particular contractor. In such cases, FAR 6.302–4 provides authority to contract without full-and-open competition. The FMS customer may also request that a subcontract be placed with a particular firm. The contracting officer shall honor such requests from the FMS customer only if the Letter of Agreement or other written direction sufficiently fulfills the requirements of FAR 6.3.

(b) Do not allow representatives of the FMS customer to—

(1) Direct the deletion of names of firms from bidders mailing lists or slates of proposed A–E firms. (They may suggest the inclusion of certain firms);

(2) Interfere with a contractor's placement of subcontracts; or

(3) Participate in the price negotiations between the U.S. Government and the contractor.

(c) Do not accept directions from the FMS customer on source selection decisions or contract terms (other than the special contract provisions and warranties referred to in Condition A.2 of the DD Form 1513).

(d) Do not honor any requests by the FMS customer to reject any bid or proposal.

225.7305 Limitation of liability.

The contracting officer must advise the contractor whenever the foreign customer will assume the risk for loss or damage under the appropriate limitation of liability clause(s) (see FAR subpart 46.8). Consider the costs of necessary insurance, if any, obtained by the contractor to cover the risk of loss or damage in establishing the FMS contract price.

225.7306 Exercise of options for foreign military sales.

Consider changes to cost and profit attributable to pricing differences between U.S. and FMS requirements when exercising an option to satisfy an FMS requirement. Also consider such changes if the option is already identified for FMS, but it is exercised for country B requirements instead of the country A requirements for which it was priced.

225.7307 Offset arrangements.

In accordance with the Presidential policy statement of April 16, 1990, DoD does not encourage, enter into, or commit U.S. firms to FMS offset arrangements. The decision whether to engage in offsets, and the responsibility for negotiating and implementing offset arrangements, resides with the companies involved.

[62 FR 34125, June 24, 1997]

225.7308 Contract clauses.

(a) Use the clause at 252.225–7027, Restriction on Contingent Fees for Foreign Military Sales, in all solicitations and contracts for foreign military sales.

(b) Use the clause at 252.225–7028, Exclusionary Policies and Practices of Foreign Governments, in all solicitations and contracts for the purchase of goods and services for international military education training and foreign military sales.

[56 FR 36367, July 31, 1991, as amended at 62 FR 2617, Jan. 17, 1997]

PART 226—OTHER SOCIOECONOMIC PROGRAMS

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226.7104 Other considerations.

Subpart 226.72—Base Closures and Realignments

226.7200 Scope.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36388, July 31, 1991, unless otherwise noted.

Subpart 226.1—Indian Incentive Program.

226.103 Procedures.

Contracting officers shall contact the Office of Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense for Acquisition and Technology, OUSD(A&T) SADBU, Room 2A340, The Pentagon, Washington, DC 20301–3061, (703) 697–1688, to obtain funding for an approved Indian incentive payment request. Upon receipt of funding from OUSD(A&T) SADBU, the contracting officer shall issue a unilateral contract modification to add the incentive payment.

[60 FR 61597, Nov. 30, 1995]

Subpart 226.70—Historically Black Colleges and Universities and Minority Institutions

§ 226.7000 Scope of subpart.

This subpart implements the historically black college and university (HBCU) and minority institution (MI) provisions of 10 U.S.C. 2323, which—

(a) Set a goal for DoD for each of fiscal years 1987 through 2000 to award five percent of contract and subcontract dollars to small disadvantaged business concerns and HBCU/MIs; and

(b) Require a separate goal, for each of fiscal years 1991 through 2000, as a subset of the five percent goal, for the participation of HBCUs and MIs.

[59 FR 27672, May 27, 1994]

226.7001 Definitions.

Definitions of HBCUs and MIs are in the clause at 252.226–7000.

226.7002 General policy.

The DoD will use outreach efforts, technical assistance programs, advance payments, HBCU/MI set-asides, and evaluation preferences to meet its contract and subcontract goal for use of HBCUs and MIs. In addition, DoD will establish ''infrastructure assistance'' (e.g., scholarships, faculty development, teaming agreements with defense laboratories, and laboratory renovation) at colleges, universities, and institutions that agree to bear a substantial portion of the costs associated with the progams.

[56 FR 67216, Dec. 30, 1991]

226.7003 Set-asides for HBCUs and MIs.

226.7003–1 Set-aside criteria.

Set-aside acquisitions for exclusive HBCU and MI participation when the acquisition is for research, studies, or services of the type normally acquired from higher educational institutions and there is a reasonable expectation that—

(a) Offers will be submitted by at least two responsible HBCUs or MIs which can comply with the subcontracting limitations in the clause at FAR 52.219–14;

(b) Award will be made at not more than ten percent above fair market price; and

(c) Scientific and/or technological talent consistent with the demands of the acquisition will be offered.

226.7003–2 Set-aside procedures.

(a) As a general rule, use competitive negotiation for HBCU/MI set-asides.

(b) When using a broad agency announcement (FAR 35.016) for basic or applied research, make partial set-asides for HBCU/MIs as explained in 235.016.

(c) Follow the special synopsis instructions in 205.207(d) (iii), (iv), and (v).

(d) Cancel the set-aside if the low responsible offer exceeds the fair market price (defined in FAR part 19) by more than ten percent.

226.7004 Evaluation preference for HBCUs and MIs.

In acquisitions which use the evaluation preference described in subpart 219.70 for small disadvantaged business concerns, the preference also applies to offers from HBCUs or MIs.

226.7005 Eligibility as an HBCU or MI.

(a) To be eligible for award as an HBCU or MI under the preference procedures of this subpart, an offeror must—

(1) Be an HBCU or MI, as defined in the clause at 252.226–7000, Notice of Historically Black College or University and Minority Institution Set-Aside, at the time of submission of its initial offer including price; and

(2) Provide the contracting officer with evidence of its HBCU or MI status upon request.

(b) The contracting officer shall accept an offeror's HBCU or MI status under the provision at 252.226–7001, unless—

(1) Another offeror challenges the status; or

(2) The contracting officer has reason to question the offeror's HBCU/MI status. (A list of HBCUs is published periodically by the Department of Education.)

[56 FR 36388, July 31, 1991, as amended at 59 FR 22131, Apr. 29, 1994; 62 FR 2613, Jan. 17, 1997]

226.7006 Protesting an HBCU or MI representation.

Any offeror or other interested party may challenge an offeror's HBCU or MI representation by filing a protest with the contracting officer. The protest must contain specific detailed evidence supporting the basis for the challenge. Such protests are handled in accordance with FAR 33.103 and are decided by the contracting officer.

226.7007 Goals and incentives for subcontracting with HBCU/MIs.

(a) In reviewing subcontracting plans submitted under the clause at FAR 52.219–9, Small Business and Small Disadvantaged Business Subcontracting Plan, the contracting officer shall—

(1) Ensure that the contractor included anticipated awards to HBCU/MIs in the small disadvantaged business goal;

(2) Consider whether subcontracts are contemplated which involve research or studies of the type normally performed by higher educational institutions.

(b) Use of incentives for subcontracting with HBCU/MIs is prescribed in 219.708(c)(1).

226.7008 Solicitation provision and contract clause.

(a) Use the clause at 252.226–7000, Notice of Historically Black College or University and Minority Institution Set-Aside, in solicitations and contracts set-aside for HBCU/MIs.

(b) Use the provision at 252.226–7001, Historically Black College or University and Minority Institution Status, in solicitations set-aside for HBCU/MIs and in solicitations which contain the clause at 252.219–7006, Notice of Evaluation Preference for Small Disadvantaged Business Concerns.

[56 FR 36388, July 31, 1991, as amended at 57 FR 42631, Sept. 15, 1992; 62 FR 2613, Jan. 17, 1997]

Subpart 226.71—Preference for Local and Small Businesses

SOURCE: 59 FR 12192, Mar. 16, 1994, unless otherwise noted.

226.7100 Scope of subpart.

This subpart implements section 2912 of the Fiscal Year 1994 Defense Authorization Act (Pub. L. 103–160) and section 817 of the Fiscal Year 1995 Defense Authorization Act (Pub. L. 103–337).

[60 FR 5870, Jan. 31, 1995]

226.7101 Definition.

Vicinity, as used in this subpart, means the county or counties in which the military installation to be closed or realigned is located and all adjacent

counties, unless otherwise defined by the agency head.

[60 FR 29499, June 5, 1995]

226.7102 Policy.

Businesses located in the vicinity of a military installation that is being closed or realigned under a base closure law, including 10 U.S.C. 2687, and small and small disadvantaged businesses shall be provided maximum practicable opportunity to participate in acquisitions that support the closure or realignment, including acquisitions for environmental restoration and mitigation.

226.7103 Procedure.

In considering acquisitions for award through the section 8(a) program (subpart 219.8 and FAR subpart 19.8) or in making set-aside decisions under subpart 219.5 and FAR subpart 19.5 for acquisitions in support of a base closure or realignment, the contracting officer shall—

(a) Determine whether there is a reasonable expectation that offers will be received from responsible business concerns located in the vicinity of the military installation that is being closed or realigned.

(b) If offers can not be expected from business concerns in the vicinity, proceed with section 8(a) or set-aside consideration as otherwise indicated in part 219 and FAR part 19.

(c) If offers can be expected from business concerns in the vicinity—

(1) Consider section 8(a) only if the 8(a) contractor is located in the vicinity.

(2) Set aside the acquisition for small disadvantaged business only if one of the expected offers is from a small disadvantaged business located in the vicinity.

(3) Set aside the acquisition for small business only if one of the expected offers is from a small business located in the vicinity.

[60 FR 29499, June 5, 1995]

226.7104 Other considerations.

When planning for contracts for services related to base closure activities at a military installation affected by a closure or realignment under a base closure law, contracting officers shall consider including, as a factor in source selection, the extent to which offerors specifically identify and commit, in their proposals, to a plan to hire residents of the vicinity of the military installation that is being closed or realigned.

[60 FR 61598, Nov. 30, 1995]

Subpart 226.72—Base Closures and Realignments

226.7200 Scope.

This subpart identifies the various policies and statutory authorities that affect contracts associated with the closure and realignment of military installations. These policies and authorities are—

(a) *Right of first refusal of employment.* This authority is embodied in a clause for use in solicitations and contracts arising from the closure of a military installation. The clause establishes employment rights for Government employees who are adversely affected by closure of the installation (see subpart 222.71).

(b) *Preference for local and small business.* This authority allows contracting officers, when entering into a contract as part of the closure or realignment of a military installation, to give preference, to the greatest extent practicable, to qualified businesses located in the vicinity of the installation and to small and small disadvantaged business concerns (see subpart 226.71).

(c) *Services at installations being closed.* This authority allows DoD, under certain conditions, to contract with local governments for police, fire protection, airfield operations and other community services at installations being closed (see subpart 237.74).

[59 FR 36089, July 15, 1994, as amended at 60 FR 29499, June 5, 1995]

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 227—PATENTS, DATA, AND COPYRIGHTS

Sec.

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227.7103–9 Copyright.
227.7103–10 Contractor identification and marking of technical data to be furnished with restrictive markings.
227.7103–11 Contractor procedures and records.
227.7103–12 Government right to establish conformity of markings.
227.7103–13 Government right to review, verify, challenge and validate asserted restrictions.
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227.7207 Contractor data repositories.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36389, July 31, 1991, unless otherwise noted.

Subpart 227.3—Patent Rights Under Government Contracts

227.303 Contract clauses.

(a) Pursuant to FAR 27.304–1(e), the contracting officer shall insert the clause at 252.227–7039, Patents—Reporting of Subject Inventions, in solicitations and contracts containing the clause at FAR 52.227–11, Patent Rights—Retention by the Contractor (Short Form).

227.304 Procedures.

227.304–1 General.

Interim and final invention reports and notification of all subcontracts for experimental, developmental, or research work (FAR 27.304–1(e)(2)(ii)) may be submitted on DD Form 882, Report of Inventions and Subcontracts.

[56 FR 36389, July 31, 1991, as amended at 57 FR 53600, Nov. 12, 1992]

227.304–4 Subcontracts.

The contracting officer shall insert the clause at 252.227–7034, Patents-Subcontracts, in solicitations and contracts containing the clause at FAR 52.227–11, Patent Rights—Retention by the Contractor (Short Form).

Subpart 227.4—Rights in Data and Copyrights

227.400 Scope of subpart.

DoD activities shall use the guidance in subparts 227.71 and 227.72 instead of the guidance in FAR subpart 27.4.

[60 FR 33471, June 28, 1995]

Subpart 227.6—Foreign License and Technical Assistance Agreements

227.670 Scope.

This subpart prescribes policy with respect to foreign license and technical assistance agreements.

227.671 General.

In furtherance of the Military Assistance Program or for other national defense purposes, the Government may undertake to develop or encourage the development of foreign additional sources of supply. The development of such sources may be accomplished by an agreement, often called a foreign licensing agreement or technical assistance agreement, wherein a domestic concern, referred to in this subpart as a ''primary source,'' agrees to furnish to a foreign concern or government, herein referred to as a ''second source;'' foreign patent rights; technical assistance in the form of data, know-how, trained personnel of the primary source, instruction and guidance of the personnel of the second source, jigs, dies, fixtures, or other manufacturing aids, or such other assistance, information, rights, or licenses as are needed to enable the second source to produce particular supplies or perform particular services. Agreements calling for one or more of the foregoing may be entered into between the primary source and the Government, a foreign government, or a foreign concern. The consideration for providing such foreign license and technical assistance may be in the form of a lump sum payment, payments for each item manufactured by the second source, an agreement to exchange data and patent rights on improvements made to the article or service, capital stock transactions, or any combination of these. The primary source's bases for computing such consideration may include actual costs; charges for the use of patents, data, or know-how reflecting the primary source's investment in developing and engineering and production techniques; and the primary source's ''price'' for setting up a second source. Such agreements often refer to the compensation to be paid as a royalty or license fee whether or not patent rights are involved.

227.672 Policy.

It is Government policy not to pay in connection with its contracts, and not to allow to be paid in connection with contracts made with funds derived through the Military Assistance Program or otherwise through the United States Government, charges for use of patents in which it holds a royalty-free license or charges for data which it has a right to use and disclose to others, or which is in the public domain, or which the Government has acquired without restriction upon its use and disclosure to others. This policy shall be applied by the Departments in negotiating contract prices for foreign license technical assistance contracts (227.675) or supply contracts with second sources (227.674); and in commenting on such agreements when they are referred to the Department of Defense by the Department of State pursuant to section 414 of the Mutual Security Act of 1954 as amended (22 U.S.C. 1934) and the International Traffic in Arms Regulations (see 227.675).

227.673 Foreign license and technical assistance agreements between the Government and domestic concerns.

(a) Contracts between the Government and a primary source to provide technical assistance or patent rights to a second source for the manufacture of supplies or performance of services shall, to the extent practicable, specify the rights in patents and data and any other rights to be supplied to the second source. Each contract shall provide, in connection with any separate agreement between the primary source and the second source for patent rights or technical assistance relating to the articles or services involved in the contract, that—

(1) The primary source and his subcontractors shall not make, on account of any purchases by the Government or by others with funds derived through the Military Assistance Program or otherwise through the Government, any charge to the second source for royalties or amortization for patents or inventions in which the Government

holds a royalty-free license; or data which the Government has the right to possess, use, and disclose to others; or any technical assistance provided to the second source for which the Government has paid under a contract between the Government and the primary source; and

(2) The separate agreement between the primary and second source shall include a statement referring to the contract between the Government and the primary source, and shall conform to the requirements of the International Traffic in Arms Regulations (see 227.675–1).

(b) The following factors, among others, shall be considered in negotiating the price to be paid the primary source under contracts within (a) of this section:

(1) The actual cost of providing data, personnel, manufacturing aids, samples, spare parts, and the like;

(2) The extent to which the Government has contributed to the development of the supplies or services, and to the methods of manufacture or performance, through past contracts for research and development or for manufacture of the supplies or performance of the services; and

(3) The Government's patent rights and rights in data relating to the supplies or services and to the methods of manufacture or of performance.

227.674 Supply contracts between the Government and a foreign government or concern.

In negotiating contract prices with a second source, including the redetermination of contract prices, or in determining the allowability of costs under a cost-reimbursement contract with a second source, the contracting officer:

(a) Shall obtain from the second source a detailed statement (see FAR 27.204–1(a)(2)) of royalties, license fees, and other compensation paid or to be paid to a primary source (or any of his subcontractors) for patent rights, rights in data, and other technical assistance provided to the second source, including identification and description of such patents, data, and technical assistance; and

(b) Shall not accept or allow charges which in effect are—

(1) For royalties or amortization for patents or inventions in which the Government holds a royalty-free license; or

(2) For data which the Government has a right to possess, use, and disclose to others; or

(3) For any technical assistance provided to the second source for which the Government has paid under a contract between the Government and a primary source.

227.675 Foreign license and technical assistance agreements between a domestic concern and a foreign government or concern.

227.675–1 International Traffic in Arms Regulations.

Pursuant to section 414 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1934), the Department of State controls the exportation of data relating to articles designated in the United States Munitions List as arms, ammunition, or munitions of war. (The Munitions List and pertinent procedures are set forth in the International Traffic in Arms Regulations, 22 CFR, *et seq.*) Before authorizing such exportation, the Department of State generally requests comments from the Department of Defense. On request of the Office of the Assistant Secretary of Defense (International Security Affairs), each Department shall submit comments thereon as the basis for a Department of Defense reply to the Department of State.

227.675–2 Review of agreements.

(a) In reviewing foreign license and technical assistance agreements between primary and second sources, the Department concerned shall, insofar as its interests are involved, indicate whether the agreement meets the requirements of §§124.07–124.10 of the International Traffic in Arms Regulations or in what respects it is deficient. Paragraphs (b) through (g) of this subsection provide general guidance.

(b) When it is reasonably anticipated that the Government will purchase from the second source the supplies or services involved in the agreement, or that Military Assistance Program

funds will be provided for the procurement of the supplies or services, the following guidance applies.

(1) If the agreement specifies a reduction in charges thereunder, with respect to purchases by or for the Government or by others with funds derived through the Military Assistance Program or otherwise through the Government, in recognition of the Government's rights in patents and data, the Department concerned shall evaluate the amount of the reduction to determine whether it is fair and reasonable in the circumstances, before indicating its approval.

(2) If the agreement does not specify any reduction in charges or otherwise fails to give recognition to the Government's rights in the patents or data involved, approval shall be conditioned upon amendment of the agreement to reflect a reduction, evaluated by the Department concerned as acceptable to the Government, in any charge thereunder with respect to purchases made by or for the Government or by others with funds derived through the Military Assistance Program or otherwise through the Government, in accordance with §124.10 of the International Traffic in Arms Regulations.

(3) If the agreement provides that no charge is to be made to the second source for data or patent rights to the extent of the Government's rights, the Department concerned shall evaluate the acceptability of the provision before indicating its approval.

(4) If time or circumstances do not permit the evaluation called for in (b)(1), (2), or (3) of this subsection, the guidance in (c) of this subsection shall be followed.

(c) When it is not reasonably anticipated that the Government will purchase from the second source the supplies or services involved in the agreement nor that Military Assistance Program funds will be provided for the purchase of the supplies or services, then the following guidance applies.

(1) If the agreement provides for charges to the second source for data or patent rights, it may suffice to fulfill the requirements of §124.10 insofar as the Department of Defense is concerned if:

(i) The agreement requires the second source to advise the primary source when he has knowledge of any purchase made or to be made from him by or for the Government or by others with funds derived through the Military Assistance Program or otherwise through the Government;

(ii) The primary source separately agrees with the Government that upon such advice to him from the second source or from the Government or otherwise as to any such a purchase or prospective purchase, he will negotiate with the Department concerned an appropriate reduction in his charges to the second source in recognition of any Government rights in patents or data; and

(iii) The agreement between the primary and second sources further provides that in the event of any such purchase and resulting reduction in charges, the second source shall pass on this reduction to the Government by giving the Government a corresponding reduction in the purchase price of the article or service.

(2) If the agreement provides that no charge is to be made to the second source for data or patent rights to the extent to which the Government has rights, the Department concerned shall:

(i) Evaluate the acceptability of the provision before indicating its approval; or

(ii) Explicitly condition its approval on the right to evaluate the acceptability of the provision at a later time.

(d) When there is a technical assistance agreement between the primary source and the Government related to the agreement between the primary and second sources that is under review, the latter agreement shall reflect the arrangements contemplated with respect thereto by the Government's technical assistance agreement with the primary source.

(e) Every agreement shall provide that any license rights transferred under the agreement are subject to existing rights of the Government.

(f) In connection with every agreement referred to in (b) of this section, a request shall be made to the primary source—

(1) To identify the patents, data, and other technical assistance to be provided to the second source by the primary source or any of his subcontractors,

(2) To identify any such patents and data in which, to the knowledge of the primary source, the Government may have rights, and

(3) To segregate the charges made to the second source for each such category or item of patents, data, and other technical assistance.

Reviewing personnel shall verify this information or, where the primary source does not furnish it, obtain such information from Governmental sources so far as practicable.

(g) The Department concerned shall make it clear that its approval of any agreement does not necessarily recognize the propriety of the charges or the amounts thereof, or constitute approval of any of the business arrangements in the agreement, unless the Department expressly intends by its approval to commit itself to the fairness and reasonableness of a particular charge or charges. In any event, a disclaimer should be made to charges or business terms not affecting any purchase made by or for the Government or by others with funds derived through the Military Assistance Program or otherwise through the Government.

227.676 Foreign patent interchange agreements.

(a) Patent interchange agreements between the United States and foreign governments provide for the use of patent rights, compensation, free licenses, and the establishment of committees to review and make recommendations on these matters. The agreements also may exempt the United States from royalty and other payments. The contracting officer shall ensure that royalty payments are consistent with patent interchange agreements.

(b) Assistance with patent rights and royalty payments in the United States European Command (USEUCOM) area of responsibility is available from HQ USEUCOM, ATTN: ECLA, Unit 30400, Box 1000, APO AE 09128; Telephone: DSN 430–7474, Commercial 49–0711–680–7474; Telefax: 49–0711–680–7408.

[62 FR 34125, June 24, 1997]

Subpart 227.70—Infringement Claims, Licenses, and Assignments

227.7000 Scope.

This subpart prescribes policy, procedures, and instructions for use of clauses with respect to processing licenses, assignments, and infringement claims.

227.7001 Policy.

Whenever a claim of infringement of privately owned rights in patented inventions or copyrighted works is asserted against any Department or Agency of the Department of Defense, all necessary steps shall be taken to investigate, and to settle administratively, deny, or otherwise dispose of such claim prior to suit against the United States. This subpart 227.70 does not apply to licenses or assignments acquired by the Department of Defense under the Patent Rights clauses.

227.7002 Statutes pertaining to administrative claims of infringement.

Statutes pertaining to administrative claims of infringement in the Department of Defense include the following: the Foreign Assistance Act of 1961, 22 U.S.C. 2356 (formerly the Mutual Security Acts of 1951 and 1954); the Invention Secrecy Act, 35 U.S.C. 181–188; 10 U.S.C. 2386; 28 U.S.C. 1498; and 35 U.S.C. 286.

227.7003 Claims for copyright infringement.

The procedures set forth herein will be followed, where applicable, in copyright infringement claims.

227.7004 Requirements for filing an administrative claim for patent infringement.

(a) A patent infringement claim for compensation, asserted against the United States under any of the applicable statutes cited in 227.7002, must be actually communicated to and received by a Department, agency, organization, office, or field establishment within

the Department of Defense. Claims must be in writing and should include the following:

(1) An allegation of infringement;

(2) A request for compensation, either expressed or implied;

(3) A citation of the patent or patents alleged to be infringed;

(4) A sufficient designation of the alleged infringing item or process to permit identification, giving the military or commercial designation, if known, to the claimant;

(5) A designation of at least one claim of each patent alleged to be infringed; or

(6) As an alternative to (a) (4) and (5) of this section, a declaration that the claimant has made a bona fide attempt to determine the item or process which is alleged to infringe, but was unable to do so, giving reasons, and stating a reasonable basis for his belief that his patent or patents are being infringed.

(b) In addition to the information listed in (a) of this section, the following material and information is generally necessary in the course of processing a claim of patent infringement. Claimants are encouraged to furnish this information at the time of filing a claim to permit the most expeditious processing and settlement of the claim.

(1) A copy of the asserted patent(s) and identification of all claims of the patent alleged to be infringed.

(2) Identification of all procurements known to claimant which involve the alleged infringing item or process, including the identity of the vendor or contractor and the Government procuring activity.

(3) A detailed identification of the accused article or process, particularly where the article or process relates to a component or subcomponent of the item procured, an element by element comparison of the representative claims with the accused article or process. If available, this identification should include documentation and drawings to illustrate the accused article or process in suitable detail to enable verification of the infringement comparison.

(4) Names and addresses of all past and present licenses under the patent(s), and copies of all license agreements and releases involving the patent(s).

(5) A brief description of all litigation in which the patent(s) has been or is now involved, and the present status thereof.

(6) A list of all persons to whom notices of infringement have been sent, including all departments and agencies of the Government, and a statement of the ultimate disposition of each.

(7) A description of Government employment or military service, if any, by the inventor and/or patent owner.

(8) A list of all Government contracts under which the inventor, patent owner, or anyone in privity with him performed work relating to the patented subject matter.

(9) Evidence of title to the patent(s) alleged to be infringed or other right to make the claim.

(10) A copy of the Patent Office file of each patent if available to claimant.

(11) Pertinent prior art known to claimant, not contained in the Patent Office file, particularly publications and foreign art.

In addition in the foregoing, if claimant can provide a statement that the investigation may be limited to the specifically identified accused articles or processes, or to a specific procurement, it may materially expedite determination of the claim.

(c) Any Department receiving an allegation of patent infringement which meets the requirements of this paragraph shall acknowledge the same and supply the other Departments which may have an interest therein with a copy of such communication and the acknowledgement thereof.

(1) For the Department of the Army—Chief, Patents, Copyrights, and Trademarks Division, U.S. Army Legal Services Agency;

(2) For the Department of the Navy—The Patent Counsel for Navy, Office of Naval Research;

(3) For the Department of the Air Force—Chief, Patents Division, Office of The Judge Advocate General;

(4) For the Defense Logistics Agency—The Office of Counsel; for the National Security Agency, the General Counsel;

(5) For the Defense Information Systems Agency—the Counsel;

(6) For the Defense Special Weapons Agency—The General Counsel; and

(7) For the Defense Mapping Agency—The Counsel.

(d) If a communication alleging patent infringement is received which does not meet the requirements set forth in paragraph (c) of this section, the sender shall be advised in writing—

(1) That his claim for infringement has not been satisfactorily presented, and

(2) Of the elements considered necessary to establish a claim.

(e) A communication making a proffer of a license in which no infringement is alleged shall not be considered as a claim for infringement.

[56 FR 36389, July 31, 1991, as amended at 56 FR 67216, Dec. 30, 1991; 61 FR 50454, Sept. 26, 1996; 62 FR 2613, Jan. 17, 1997]

227.7005 Indirect notice of patent infringement claims.

(a) A communication by a patent owner to a Department of Defense contractor alleging that the contractor has committed acts of infringement in performance of a Government contract shall not be considered a claim within the meaning of 227.7004 until it meets the requirements specified therein.

(b) Any Department receiving an allegation of patent infringement which meets the requirements of 227.7004 shall acknowledge the same and supply the other Departments (see 227.7004(c)) which may have an interest therein with a copy of such communication and the acknowledgement thereof.

(c) If a communication covering an infringement claim or notice which does not meet the requirements of 227.7004(a) is received from a contractor, the patent owner shall be advised in writing as covered by the instructions of 227.7004(d).

227.7006 Investigation and administrative disposition of claims.

An investigation and administrative determination (denial or settlement) of each claim shall be made in accordance with instructions and procedures established by each Department, subject to the following:

(a) When the procurement responsibility for the alleged infringing item or process is assigned to a single Department or only one Department is the purchaser of the alleged infringing item or process, and the funds of that Department only are to be charged in the settlement of the claim, that Department shall have the sole responsibility for the investigation and administrative determination of the claim and for the execution of any agreement in settlement of the claim. Where, however, funds of another Department are to be charged, in whole or in part, the approval of such Department shall be obtained as required by 208.7002. Any agreement in settlement of the claim, approved pursuant to 208.7002 shall be executed by each of the Departments concerned.

(b) When two or more Departments are the respective purchasers of alleged infringing items or processes and the funds of those Departments are to be charged in the settlement of the claim, the investigation and administrative determination shall be the responsibility of the Department having the predominant financial interest in the claim or of the Department or Departments as jointly agreed upon by the Departments concerned. The Department responsible for negotiation shall, throughout the negotiation, coordinate with the other Departments concerned and keep them advised of the status of the negotiation. Any agreement in the settlement of the claim shall be executed by each Department concerned.

227.7007 Notification and disclosure to claimants.

When a claim is denied, the Department responsible for the administrative determination of the claim shall so notify the claimant or his authorized representative and provide the claimant a reasonable rationale of the basis for denying the claim. Disclosure of information or the rationale referred to above shall be subject to applicable statutes, regulations, and directives pertaining to security, access to official records, and the rights of others.

227.7008 Settlement of indemnified claims.

Settlement of claims involving payment for past infringement shall not be

made without the consent of, and equitable contribution by, each indemnifying contractor involved, unless such settlement is determined to be in the best interests of the Government and is coordinated with the Department of Justice with a view to preserving any rights of the Government against the contractors involved. If consent of and equitable contribution by the contractors are obtained, the settlement need not be coordinated with the Department of Justice.

227.7009 Patent releases, license agreements, and assignments.

This section contains clauses for use in patent release and settlement agreements, license agreements, and assignments, executed by the Government, under which the Government acquires rights. Minor modifications of language (e.g., pluralization of ''Secretary'' or ''Contracting Officer'') in multi-departmental agreements may be made if necessary.

227.7009–1 Required clauses.

(a) Covenant Against Contingent Fees. Insert the clause at FAR 52.203–5.

(b) Gratuities. Insert the clause at FAR 52.203–3.

(c) Assignment of Claims. Insert the clause at FAR 52.232–23.

(d) Disputes. Pursuant to FAR 33.014, insert the clause at FAR 52.233–1.

(e) Non-Estoppel. Insert the clause at 252.227–7000.

[56 FR 36389, July 31, 1991, as amended at 61 FR 50454, Sept. 26, 1996]

227.7009–2 Clauses to be used when applicable.

(a) *Release of past infringement.* The clause at 252.227–7001, Release of Past Infringement, is an example which may be modified or omitted as appropriate for particular circumstances, but only upon the advice of cognizant patent or legal counsel. (See footnotes at end of clause.)

(b) *Readjustment of payments.* The clause at 252.227–7002, Readjustment of Payments, shall be inserted in contracts providing for payment of a running royalty.

(c) *Termination.* The clause at 252.227–7003, Termination, is an example for use in contracts providing for the payment of a running royalty. This clause may be modified or omitted as appropriate for particular circumstances, but only upon the advice of cognizant patent or legal counsel (see 227.7004(c)).

227.7009–3 Additional clauses—contracts except running royalty contracts.

The following clauses are examples for use in patent release and settlement agreements, and license agreements not providing for payment by the Government of a running royalty.

(a) License Grant. Insert the clause at 252.227–7004.

(b) License Term. Insert one of the clauses at 252.227–7005 Alternate I or Alternate II, as appropriate.

227.7009–4 Additional clauses—contracts providing for payment of a running royalty.

The clauses set forth below are examples which may be used in patent release and settlement agreements, and license agreements, when it is desired to cover the subject matter thereof and the contract provides for payment of a running royalty.

(a) *License grant—running royalty.* No Department shall be obligated to pay royalties unless the contract is signed on behalf of such Department. Accordingly, the License Grant clause at 252.227–7006 should be limited to the practice of the invention by or for the signatory Department or Departments.

(b) *License term—running royalty.* The clause at 252.227–7007 is a sample form for expressing the license term.

(c) *Computation of royalties.* The clause at 252.227–7008 providing for the computation of royalties, may be of varying scope depending upon the nature of the royalty bearing article, the volume of procurement, and the type of contract pursuant to which the procurement is to be accomplished.

(d) *Reporting and payment of royalties.* (1) The contract should contain a provision specifying the office designated within the specific Department involved to make any necessary reports to the contractor of the extent of use of the licensed subject matter by the entire Department, and such office shall be charged with the responsibility of obtaining from all procuring offices

of that Department the information necessary to make the required reports and corresponding vouchers necessary to make the required payments. The clause at 252.227–7009 is a sample for expressing reporting and payment of royalties requirements.

(2) Where more than one Department or Government Agency is licensed and there is a ceiling on the royalties payable in any reporting period, the licensing Departments or Agencies shall coordinate with respect to the pro rata share of royalties to be paid by each.

(e) *License to other government agencies.* When it is intended that a license on the same terms and conditions be available to other departments and agencies of the Government, the clause at 252.227–7010 is an example which may be used.

227.7010 Assignments.

(a) The clause at 252.227–7011 is an example which may be used in contracts of assignment of patent rights to the Government.

(b) To facilitate proof of contracts of assignments, the acknowledgement of the contractor should be executed before a notary public or other officer authorized to administer oaths (35 U.S.C. 261).

227.7011 Procurement of rights in inventions, patents, and copyrights.

Even though no infringement has occurred or been alleged, it is the policy of the Department of Defense to procure rights under patents, patent applications, and copyrights whenever it is in the Government's interest to do so and the desired rights can be obtained at a fair price. The required and suggested clauses at 252.227–7004 and 252.227–7010 shall be required and suggested clauses, respectively, for license agreements and assignments made under this paragraph. The instructions at 227.7009–3 and 227.7010 concerning the applicability and use of those clauses shall be followed insofar as they are pertinent.

227.7012 Contract format.

The format at 252.227–7012 appropriately modified where necessary, may be used for contracts of release, license, or assignment.

227.7013 Recordation.

Executive Order No. 9424 of 18 February 1944 requires all executive Departments and agencies of the Government to forward through appropriate channels to the Commissioner of Patents and Trademarks, for recording, all Government interests in patents or applications for patents.

Subpart 227.71—Rights in Technical Data

SOURCE: 60 FR 33471, June 28, 1995, unless otherwise noted.

227.7100 Scope of subpart.

This subpart—

(a) Prescribes policies and procedures for the acquisition of technical data and the rights to use, modify, reproduce, release, perform, display, or disclose technical data. It implements requirements in the following laws and Executive Order:

(1) 10 U.S.C. 2302(4).

(2) 10 U.S.C. 2305 (subsection (d)(4)).

(3) 10 U.S.C. 2320.

(4) 10 U.S.C. 2321.

(5) 10 U.S.C. 2325.

(6) Pub. L. 103–355.

(7) Executive Order 12591 (Subsection 1(b)(6)).

(b) Does not apply to computer software or technical data that is computer software documentation (see subpart 227.72).

227.7101 Definitions.

(a) As used in this subpart, unless otherwise specifically indicated, the terms ''offeror'' and ''contractor'' include an offeror's or contractor's subcontractors, suppliers, or potential subcontractors or suppliers at any tier.

(b) Other terms used in this subpart are defined in the clause at 252.227–7013, Rights in Technical Data—Noncommercial Items.

[56 FR 36389, July 31, 1991, as amended at 60 FR 61598, Nov. 30, 1995]

227.7102 Commercial items, components, or processes.

Section 2320(b)(1) of Title 10 U.S.C. establishes a presumption that commercial items are developed at private expense whether or not a contractor

submits a justification in response to a challenge notice. Therefore, do not challenge a contractor's assertion that a commercial item, component, or process was developed at private expense unless the Government can demonstrate that it contributed to development of the item, component or process. Follow the procedures in 227.7103–13 and the clause at 252.227–7037, Validation of Restrictive Markings on Technical Data, when information provided by the Department of Defense demonstrates that an item, component, or process was not developed exclusively at private expense. However, when a challenge is warranted, a contractor's or subcontractor's failure to respond to the challenge notice cannot be the sole basis for issuing a final decision denying the validity of an asserted restriction.

227.7102–1 Policy.

(a) DoD shall acquire only the technical data customarily provided to the public with a commercial item or process, except technical data that—

(1) Are form, fit, or function data;

(2) Are required for repair or maintenance of commercial items or processes, or for the proper installation, operating, or handling of a commercial item, either as a stand alone unit or as a part of a military system, when such data are not customarily provided to commercial users or the data provided to commercial users is not sufficient for military purposes; or

(3) Describe the modifications made at Government expense to a commercial item or process in order to meet the requirements of a Government solicitation.

(b) To encourage offerors and contractors to offer or use commercial products to satisfy military requirements, offerors, and contractors shall not be required, except for the technical data described in paragraph (a) of this subsection, to—

(1) Furnish technical information related to commercial items or processes that is not customarily provided to the public; or

(2) Relinquish to, or otherwise provide, the Government rights to use, modify, reproduce, release, perform, display, or disclose technical data pertaining to commercial items or processes except for a transfer of rights mutually agreed upon.

227.7102–2 Rights in technical data.

(a) The clause at 252.227–7015, Technical Data—Commercial Items, provides the Government specific license rights in technical data pertaining to commercial items or processes. DoD may use, modify, reproduce, release, perform, display, or disclose data only within the Government. The data may not be used to manufacture additional quantities of the commercial items and, except for emergency repair or overhaul, may not be released or disclosed to, or used by, third parties without the contractor's written permission. Those restrictions do not apply to the technical data described in 227.7102–1(a).

(b) If additional rights are needed, contracting activities must negotiate with the contractor to determine if there are acceptable terms for transferring such rights. The specific additional rights granted to the Government shall be enumerated in a license agreement made part of the contract.

227.7102–3 Contract clause.

(a) Except as provided in paragraph (b) of this subsection, use the clause at 252.227–7015, Technical Data—Commercial Items, in all solicitations and contracts when the contractor will be required to deliver technical data pertaining to commercial items, components, or processes. Do not require the contractor to include this clause in its subcontracts.

(b) Use the clause at 252.227–7013, Rights in Technical Data—Noncommercial Items, in lieu of the clause at 252.227–7015 if the Government will pay any portion of the development costs. Do not require the contractor to include this clause in its subcontracts for commercial items or commercial components.

(c) Use the clause at 252.227–7037, Validation of Restrictive Markings on Technical Data, in all solicitations and contracts for commercial items that include the clause at 252.227–7015 or the clause at 252.227–7013. Do not require the contractor to include this clause in

its subcontracts for commercial items or commercial components.

[56 FR 36389, July 31, 1991, as amended at 60 FR 61598, Nov. 30, 1995]

227.7103 Noncommercial items or processes.

227.7103–1 Policy.

(a) DoD policy is to acquire only the technical data, and the rights in that data, necessary to satisfy agency needs.

(b) Solicitations and contracts shall—

(1) Specify the technical data to be delivered under a contract and delivery schedules for the data;

(2) Establish or reference procedures for determining the acceptability of technical data;

(3) Establish separate contract line items, to the extent practicable, for the technical data to be delivered under a contract and require offerors and contractors to price separately each deliverable data item; and

(4) Require offerors to identify, to the extent practicable, technical data to be furnished with restrictions on the Government's rights and require contractors to identify technical data to be delivered with such restrictions prior to delivery.

(c) Offerors shall not be required, either as a condition of being responsive to a solicitation or as a condition for award, to sell or otherwise relinquish to the Government any rights in technical data related to items, components or processes developed at private expense except for the data identified at 227.7103–5(a)(2) and (a)(4) through (9).

(d) Offerors and contractors shall not be prohibited or discouraged from furnishing or offering to furnish items, components, or processes developed at private expense solely because the Government's rights to use, modify, release, reproduce, perform, display, or disclose technical data pertaining to those items may be restricted.

(e) As provided in 10 U.S.C. 2305, solicitations for major systems development contracts shall not require offerors to submit proposals that would permit the Government to acquire competitively items identical to items developed at private expense unless a determination is made at a level above the contracting officer that—

(1) The offeror will not be able to satisfy program schedule or delivery requirements; or

(2) The offeror's proposal to meet mobilization requirements does not satisfy mobilization needs.

227.7103–2 Acquisition of technical data.

(a) Contracting officers shall work closely with data managers and requirements personnel to assure that data requirements included in solicitations are consistent with the policy expressed in 227.7103–1.

(b)(1) Data managers or other requirements personnel are responsible for identifying the Government's minimum needs for technical data. Data needs must be established giving consideration to the contractor's economic interests in data pertaining to items, components, or processes that have been developed at private expense; the Government's costs to acquire, maintain, store, retrieve, and protect the data; reprocurement needs; repair, maintenance and overhaul philosophies; spare and repair part considerations; and whether procurement of the items, components, or processes can be accomplished on a form, fit, or function basis. When it is anticipated that the Government will obtain unlimited or government purpose rights in technical data that will be required for competitive spare or repair parts procurements, such data should be identified as deliverable data items. Reprocurement needs may not be a sufficient reason to acquire detailed manufacturing or process data when items or components can be acquired using performance specifications, form, fit and function data, or when there are a sufficient number of alternate sources which can reasonably be expected to provide such items on a performance specification or form, fit, or function basis.

(2) When reviewing offers received in response to a solicitation or other request for data, data managers must balance the original assessment of the Government's data needs with data prices contained in the offer.

(c) Contracting officers are responsible for ensuring that, wherever practicable, solicitations and contracts—

(1) Identify the type and quantity of the technical data to be delivered under the contract and the format and media in which the data will be delivered;

(2) Establish each deliverable data item as a separate contract line item (this requirement may be satisfied by listing each deliverable data item on an exhibit to the contract);

(3) Identify the prices established for each deliverable data item under a fixed-price type contract;

(4) Include delivery schedules and acceptance criteria for each deliverable data item; and

(5) Specifically identify the place of delivery for each deliverable item of technical data.

227.7103–3 Early identification of technical data to be furnished to the Government with restrictions on use, reproduction or disclosure.

(a) 10 U.S.C. 2320 requires, to the maximum extent practicable, an identification prior to delivery of any technical data to be delivered to the Government with restrictions on use.

(b) Use the provision at 252.227–7017, Identification and Assertion of Use, Release, or Disclosure Restrictions, in all solicitations that include the clause at 252.227–7013, Rights in Technical Data—Noncommercial Items. The provision requires offerors to identify any technical data for which restrictions, other than copyright, on use, release, or disclosure are asserted and to attach the identification and assertions to the offer.

(c) Subsequent to contract award, the clause at 252.277–7013 permits a contractor, under certain conditions, to make additional assertions of use, release, or disclosure restrictions. The prescription for the use of that clause and its alternate is at 227.7103–6 (a) and (b).

227.7103–4 License rights.

(a) *Grant of license.* The Government obtains rights in technical data, including a copyright license, under and irrevocable license granted or obtained for the Government by the contractor. The contractor or licensor retains all rights in the data not granted to the Government. For technical data that pertain to items, components, or processes, the scope of the license is generally determined by the source of funds used to develop the item, component, or process. When the technical data do not pertain to items, components, or processes, the scope of the license is determined by the source of funds used to create the data.

(1) *Techical data pertaining to items, components, or processes.* Contractors or licensors may, with some exceptions (see 227.7103–5(a)(2) and (a)(4) through (9)), restrict the Government's rights to use, modify, release, reproduce, perform, display or disclose technical data pertaining to items, components, or processes developed exclusively at private expense (limited rights). They may not restrict the Government's rights in items, components, or processes developed exclusively at Government expense (unlimited rights) without the Government's approval. When an item, component, or process is developed with mixed funding, the Government may use, modify, release, reproduce, perform, display or disclose the data pertaining to such items, components, or processes within the Government without restriction but may release or disclose the data outside the Government only for government purposes (government purpose rights).

(2) *Technical data that do not pertain to items, components, or processes.* Technical data may be created during the performance of a contract for a conceptual design or similar effort that does not require the development, manufacture, construction, or production of items, components or processes. The Government generally obtains unlimited rights in such data when the data were created exclusively with Government funds, government purpose rights when the data were created with mixed funding, and limited rights when the data were created exclusively at private expense.

(b) *Source of funds determination.* The determination of the source of development funds for technical data pertaining to items, components, or processes should be made at any practical subitem or subcomponent level or for any

segregable portion of a process. Contractors may assert limited rights in a segregable sub-item, sub-component, or portion of a process which otherwise qualifies for limited rights under the clause at 252.227–7013, Rights in Technical Data—Noncommercial Items.

227.7103–5 Government rights.

The standard license rights that a licensor grants to the Government are unlimited rights, government purpose rights, or limited rights. Those rights are defined in the clause at 252.227–7013, Rights in Technical Data—Noncommercial Items. In unusual situations, the standards rights may not satisfy the Government's needs or the Government may be willing to accept lesser rights in data in return for other consideration. In those cases, a special license may be negotiated. However, the licensor is not obligated to provide the Government greater rights and the contracting officer is not required to accept lesser rights than the rights provided in the standard grant of license. The situations under which a particular grant of license applies are enumerated in paragraphs (a) through (d) of this subsection.

(a) *Unlimited rights.* The Government obtains unlimited rights in technical data that are—

(1) Data pertaining to an item, component, or process which has been or will be developed exclusively with Government funds;

(2) Studies, analyses, test data, or similar data produced in the performance of a contract when the study, analysis, test, or similar work was specified as an element of performance;

(3) Created exclusively with Government funds in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes;

(4) Form, fit, and function data;

(5) Necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);

(6) Corrections or changes to technical data furnished to the contractor by the Government;

(7) Publicly available or have been released or disclosed by the contractor or subcontractor without restrictions on further use, release or disclosure other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the software to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(8) Data in which the Government has obtained unlimited rights under another Government contract or as a result of negotiations; or

(9) Data furnished to the Government, under a Government contract or subcontract thereunder, with—

(i) Government purpose license rights or limited rights and the restrictive condition(s) has/have expired; or

(ii) Government purpose rights and the contractor's exclusive right to use such data for commercial purposes has expired.

(b) *Government purpose rights.* (1) The Government obtains government purpose rights in technical data—

(i) That pertain to items, components, or processes developed with mixed funding except when the Government is entitled to unlimited rights as provided in paragraphs (a)(2) and (a)(4) through (9) of this subsection; or

(ii) Created with mixed funding in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.

(2) The period during which government purpose rights are effective is negotiable. The clause at 252.227–7013 provides a nominal five-year period. Either party may request a different period. Changes to the government purpose rights period may be made at any time prior to delivery of the technical data without consideration from either party. Longer periods should be negotiated when a five-year period does not provide sufficient time to apply the data for commercial purposes or when necessary to recognize subcontractors' interests in the data.

(3) The government purpose rights period commences upon execution of the contract, subcontract, letter contract (or similar contractual instrument), contract modification, or option exercise that required the development. Upon expiration of the Government rights period, the Government

has unlimited rights in the data including the right to authorize others to use the data for commercial purposes.

(4) During the government purpose rights period, the government may not use, or authorize other persons to use, technical data marked with government purpose rights legends for commercial purposes. The Government shall not release or disclose data in which it has government purpose rights to any person, or authorize others to do so, unless—

(i) Prior to release or disclosure, the intended recipient is subject to the use and non-disclosure agreement at 227.7103–7; or

(ii) The intended recipient is a Government contractor receiving access to the data for performance of a Government contract that contains the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(5) When technical data marked with government purpose rights legends will be released or disclosed to a Government contractor performing a contract that does not include the clause at 252–227–7025, the contract may be modified, prior to release or disclosure, to include that clause in lieu of requiring the contractor to complete a use and non-disclosure agreement.

(6) Contracting activities shall establish procedures to assure that technical data marked with government purpose rights legends are released or disclosed, including a release or disclosure through a Government solicitation, only to persons subject to the use and non-disclosure restrictions. Public announcements in the Commerce Business Daily or other publications must provide notice of the use and non-disclosure requirements. Class use and non-disclosure agreements (e.g., agreements covering all solicitations received by the XYZ company within a reasonable period) are authorized and may be obtained at any time prior to release or disclosure of the government purpose rights data. Documents transmitting government purpose rights data to persons under class agreements shall identify the technical data subject to government purpose rights and the class agreement under which such data are provided.

(c) *Limited rights.* (1) The Government obtains limited rights in technical data—

(i) That pertain to items, components, or processes developed exclusively at private expense except when the Government is entitled to unlimited rights as provided in paragraphs (a)(2) and (a)(4) through (9) of this subsection; or

(ii) Created exclusively at private expense in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.

(2) Data in which the Government has limited rights may not be used, released, or disclosed outside the Government without the permission of the contractor asserting the restriction except for a use, release or disclosure that is—

(i) Necessary for emergency repair and overhaul; or

(ii) To a foreign government, other than detailed manufacturing or process data, when use, release, or disclosure is in the interest of the United States and is required for evaluation or informational purposes.

(3) The person asserting limited rights must be notified of the Government's intent to release, disclose, or authorize others to use such data prior to release or disclosure of the data except notification of an intended release, disclosure, or use for emergency repair or overhaul which shall be made as soon as practicable.

(4) When the person asserting limited rights permits the Government to release, disclose, or have others use the data subject to restrictions on further use, release, or disclosure, or for a release under paragraph (c)(2)(i) or (ii) of this subsection, the intended recipient must complete the use and non-disclosure agreement at 227.7103–7 prior to release or disclosure of the limited rights data.

(d) *Specifically negotiated license rights.* (1) Negotiate specific licenses when the parties agree to modify the standard license rights granted to the government or when the government wants to obtain rights in data in which

it does not have rights. When negotiating to obtain, relinquish, or increase the Government's rights in technical data, consider the acquisition strategy for the item, component, or process, including logistics support and other factors which may have relevance for a particular procurement. The Government may accept lesser rights when it has unlimited or government purpose rights in data but may not accept less than limited rights in such data. The negotiated license rights must stipulate what rights the Government has to release or disclose the data to other persons or to authorize others to use the data. Identify all negotiated rights in a license agreement made part of the contract.

(2) When the Government needs additional rights in data acquired with government purpose or limited rights, the contracting officer must negotiate with the contractor to determine whether there are acceptable terms for transferring such rights. Generally, such negotiations should be conducted only when there is a need to disclose the data outside the Government or if the additional rights are required for competitive reprocurement and the anticipated savings expected to be obtained through competition are estimated to exceed the acquisition cost of the additional rights. Prior to negotiating for additional rights in limited rights data, consider alternatives such as—

(i) Using performance specifications and form, fit, and function data to acquire or develop functionally equivalent items, components, or processes;

(ii) Obtaining a contractor's contractual commitment to qualify additional sources and maintain adequate competition among the sources; or

(iii) Reverse engineering, or providing items from Government inventories to contractors who request the items to facilitate the development of equivalent items through reverse engineering.

227.7103–6 Contract clauses.

(a) Use the clause at 252.227–7013, Rights in Technical Data—Noncommercial Items, in solicitations and contracts when the successful offeror(s) will be required to deliver technical data to the Government. Do not use the clause when the only deliverable items are computer software or computer software documentation (see 227.72), commercial items (see 227.7102–3), existing works (see 227.7105), special works (see 227.7106), or when contracting under the Small Business Innovation Research Program (see 227.7104). Except as provided in 227.7107–2, do not use the clause in architect-engineer and construction contracts.

(b) Use the clause at 252.227–7013 with its Alternate I in research contracts when the contracting officer determines, in consultation with counsel, that public dissemination by the contractor would be—

(1) In the interest of the government; and

(2) Facilitated by the Government relinquishing its right to publish the work for sale, or to have others publish the work for sale on behalf of the Government.

(c) Use the clause at 252.227–7025, Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends, in solicitations and contracts when it is anticipated that the Government will provide the contractor, for performance of its contract, technical data marked with another contractor's restrictive legend(s).

(d) Use the provision at 252.227–7028, Technical Data or Computer Software Previously Delivered to the Government, in solicitations when the resulting contract will require the contractor to deliver technical data. The provision requires offerors to identify any technical data specified in the solicitations as deliverable data items that are the same or substantially the same as data items the offeror has delivered or is obligated to deliver, either as a contractor or subcontractor, under any other federal agency contract.

(e) Use the following clauses in solicitations and contracts that include the clause at 252.227–7013:

(1) 252.227–7016, Rights in Bid or Proposal Information;

(2) 252.227–7030, Technical Data—Withholding of Payment;

(3) 252.227–7036, Declaration of Technical Data Conformity; and

(4) 252.227–7037, Validation of Restrictive Markings on Technical Data (paragraph (e) of the clause contains information that must be included in a challenge).

[60 FR 33471, June 28, 1995; 60 FR 41157, Aug. 11, 1995; 60 FR 61598, Nov. 30, 1995; 62 FR 2613, Jan. 17, 1997]

227.7103–7 Use and non-disclosure agreement.

(a) Except as provided in paragraph (b) of this subsection, technical data or computer software delivered to the Government with restrictions on use, modification, reproduction, release, performance, display, or disclosure may not be provided to third parties unless the intended recipient completes and signs the use and non-disclosure agreement at paragraph (c) of this subsection prior to release, or disclosure of the data.

(1) The specific conditions under which an intended recipient will be authorized to use, modify, reproduce, release, perform, display, or disclose technical data subject to limited rights or computer software subject to restricted rights must be stipulated in an attachment to the use and non-disclosure agreement.

(2) For an intended release, disclosure, or authorized use of technical data or computer software subject to special license rights, modify paragraph (1)(d) of the use and non-disclosure agreement to enter the conditions, consistent with the license requirements, governing the recipient's obligations regarding use, modification, reproduction, release, performance, display or disclosure of the data or software.

(b) The requirement for use and non-disclosure agreements does not apply to Government contractors which require access to a third party's data or software for the performance of a Government contract that contains the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(c) The prescribed use and non-disclosure agreement is:

Use and Non-Disclosure Agreement

The undersigned, _____ (Insert Name) _____, an authorized representative of the _____ (Insert Company Name) _____, (which is hereinafter referred to as the ''Recipient'') requests the Government to provide the Recipient with technical data or computer software (hereinafter referred to as ''Data'') in which the Government's use, modification, reproduction, release, performance, display or disclosure rights are restricted. Those Data are identified in an attachment to this Agreement. In consideration for receiving such Data, the Recipient agrees to use the Data strictly in accordance with this Agreement:

(1) The Recipient shall—

(a) Use, modify, reproduce, release, perform, display, or disclose Data marked with government purpose rights or SBIR data rights legends only for government purposes and shall not do so for any commercial purpose. The Recipient shall not release, perform, display, or disclose these Data, without the express written permission of the contractor whose name appears in the restrictive legend (the ''Contractor''), to any person other than its subcontractors or suppliers, or prospective subcontractors or suppliers, who require these Data to submit offers for, or perform, contracts with the Recipient. The Recipient shall require its subcontractors or suppliers, or prospective subcontractors or suppliers, to sign a use and non-disclosure agreement prior to disclosing or releasing these Data to such persons. Such agreement must be consistent with the terms of this agreement.

(b) Use, modify, reproduce, release, perform, display, or disclose technical data marked with limited rights legends only as specified in the attachment to this Agreement. Release, performance, display, or disclosure to other persons is not authorized unless specified in the attachment to this Agreement or expressly permitted in writing by the Contractor. The Recipient shall promptly notify the Contractor of the execution of this Agreement and identify the Contractor's Data that has been or will be provided to the Recipient, the date and place the Data were or will be received, and the name and address of the Government office that has provided or will provide the Data.

(c) Use computer software marked with restricted rights legends only in performance of Contract Number _____ (insert contract number(s)) _____. The recipient shall not, for example, enhance, decompile, disassemble, or reverse engineer the software; time share, or use a computer program with more than one computer at a time. The recipient may not release, perform, display, or disclose such software to others unless expressly permitted in writing

by the licensor whose name appears in the restrictive legend. The Recipient shall promptly notify the software licensor of the execution of this Agreement and identify the software that has been or will be provided to the Recipient, the date and place the software were or will be received, and the name and address of the Government office that has provided or will provide the software.

(d) Use, modify, reproduce, release, perform, display, or disclose Data marked with special license rights legends (To be completed by the contracting officer. See 227.7103–7(a)(2). Omit if none of the Data requested is marked with special license rights legends).

(2) The Recipient agrees to adopt or establish operating procedures and physical security measures designed to protect these Data from inadvertent release or disclosure to unauthorized third parties.

(3) The Recipient agrees to accept these Data ''as is'' without any Government representation as to suitability for intended use or warranty whatsoever. This disclaimer does not affect any obligation the Government may have regarding Data specified in a contract for the performance of that contract.

(4) The Recipient may enter into any agreement directly with the Contractor with respect to the use, modification, reproduction, release, performance, display, or disclosure of these Data.

(5) The Recipient agrees to indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorneys fees, court costs, and expenses arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of Data received from the Government with restrictive legends by the Recipient or any person to whom the Recipient has released or disclosed the Data.

(6) The Recipient is executing this Agreement for the benefit of the Contractor. The Contractor is a third party beneficiary of this Agreement who, in addition to any other rights it may have, is intended to have the rights of direct action against the Recipient or any other person to whom the Recipient has released or disclosed the Data, to seek damages from any breach of this Agreement or to otherwise enforce this Agreement.

(7) The Recipient agrees to destroy these Data, and all copies of the Data in its possession, no later than 30 days after the date shown in paragraph (8) of this Agreement, to have all persons to whom it released the Data do so by that date, and to notify the Contractor that the Data have been destroyed.

(8) This Agreement shall be effective for the period commencing with the Recipient's execution of this Agreement and ending upon _____ (Insert Date) _____. The obligations imposed by this Agreement shall survive the expiration or termination of the Agreement.

Recipient's Business Name _____

By _____

Authorized Representative

_____

Date

Representative's Typed Name _____

and Title _____

(End of use and non-disclosure agreement)

227.7103–8 Deferred delivery and deferred ordering of technical data.

(a) *Deferred delivery*. Use the clause at 252.227–7026, Deferred Delivery of Technical Data or Computer Software, when it is in the Government's interests to defer the delivery of technical data. The clause permits the contracting officer to require the delivery of technical data identified as ''deferred delivery'' data at any time until two years after acceptance by the Government of all items (other than technical data or computer software) under the contract or contract termination, whichever is later. The obligation of subcontractors or suppliers to deliver such technical data expires two years after the date the prime contractor accepts the last item from the subcontractor or supplier for use in the performance of the contract. The contract must specify which technical data is subject to deferred delivery. The contracting officer shall notify the contractor sufficiently in advance of the desired delivery date for such data to permit timely delivery.

(b) *Deferred ordering.* Use the clause at 252.227–7027, Deferred Ordering of Technical Data or Computer Software, when a firm requirement for a particular data item(s) has not been established prior to contract award but there is a potential need for the data. Under this clause, the contracting officer may order any data that has been generated in the performance of the contract or any subcontract thereunder at any time until three years after acceptance of all items (other than technical data or computer software) under the contract or contract termination, whichever is later. The obligation of subcontractors to deliver such data expires three years after the date the contractor accepts the last

item under the subcontract. When the data are ordered, the delivery dates shall be negotiated and the contractor compensated only for converting the data into the prescribed form, reproduction costs, and delivery costs.

227.7103–9 Copyright.

(a) *Copyright license.* (1) The clause at 252.227–7013, Rights in Technical Data—Noncommercial Items, requires a contractor to grant or obtain for the Government license rights which permit the Government to reproduce data, distribute copies of the data, publicly perform or display the data or, through the right to modify data, prepare derivative works. The extent to which the Government, and others acting on its behalf, may exercise these rights varies for each of the standard data rights licenses obtained under the clause. When non-standard license rights in technical data will be negotiated, negotiate the extent of the copyright license concurrent with negotiations for the data rights license. Do not negotiate a copyright license that provides less rights than the standard limited rights license in technical data.

(2) The clause at 252.227–7013 does not permit a contractor to incorporate a third party's copyrighted data into a deliverable data item unless the contractor has obtained an appropriate license for the Government and, when applicable, others acting on the Government's behalf, or has obtained the contracting officer's written approval to do so. Grant approval to use third party copyrighted data in which the Government will not receive a copyright license only when the Government's requirements cannot be satisfied without the third party material or when the use of the third party material will result in cost savings to the Government which outweigh the lack of a copyright license.

(b) *Copyright considerations—acquisition of existing and special works.* See 227.7105 or 227.7106 for copyright considerations when acquiring existing or special works.

227.7103–10 Contractor identification and marking of technical data to be furnished with restrictive markings.

(a) *Identification requirements.* (1) The solicitation provision at 252.227–7017, Identification and Assertion of Use, Release, or Disclosure Restrictions, requires offerors to identify to the contracting officer, prior to contract award, any technical data that the offeror asserts should be provided to the Government with restrictions on use, modification, reproduction, release or disclosure. This requirement does not apply to restrictions based solely on copyright. The notification and identification must be submitted as an attachment to the offer. If an offeror fails to submit the attachment or fails to complete the attachment in accordance with the requirements of the solicitation provision, such failure shall constitute a minor informality. Provide offerors an opportunity to remedy a minor informality in accordance with the procedures at FAR 14.405 or 15.607. An offeror's failure to correct the informality within the time prescribed by the contracting officer shall render the offer ineligible for award.

(2) The procedures for correcting minor informalities shall not be used to obtain information regarding asserted restrictions or an offeror's suggested asserted rights category. Questions regarding the justification for an asserted restriction or asserted rights category must be pursued in accordance with the procedures at 227.7103–13.

(3) The restrictions asserted by a successful offeror shall be attached to its contract unless, in accordance with the procedures at 227.7103–13, the parties have agreed that an asserted restriction is not justified. The contract attachment shall provide the same information regarding identification of the technical data, the asserted rights category, the basis for the assertion, and the name of the person asserting the restrictions as required by paragraph (d) of the solicitation provision at 252.227–7017. Subsequent to contract award, the clause at 252.227–7013, Rights in Technical Data—Noncommercial Items, permits the contractor to make

additional assertions under certain conditions. The additional assertions must be made in accordance with the procedures and in the format prescribed by that clause.

(4) Neither the pre- or post-award assertions made by the contractor, nor the fact that certain assertions are identified in the attachment to the contract, determine the respective rights of the parties. As provided at 227.7103–13, the Government has the right to review, verify, challenge and validate restrictive markings.

(5) Information provided by offerors in response to the solicitation provision may be used in the source selection process to evaluate the impact on evaluation factors that may be created by restrictions on the Government's ability to use or disclose technical data. However, offerors shall not be prohibited from offering products for which the offeror is entitled to provide the Government limited rights in the technical data pertaining to such products and offerors shall not be required, either as a condition of being responsive to a solicitation or as a condition for award, to sell or otherwise relinquish any greater rights in technical data when the offeror is entitled to provide the technical data with limited rights.

(b) *Contractor marking requirements.* The clause at 252.227–7013, Rights in Technical Data—Noncommercial Items—

(1) Requires a contractor that desires to restrict the Government's rights in technical data to place restrictive markings on the data, provides instructions for the placement of the restrictive markings, and authorizes the use of certain restrictive markings; and

(2) Requires a contractor to deliver, furnish, or otherwise provide to the Government any technical data in which the Government has previously obtained rights with the Government's pre-existing rights in that data unless the parties have agreed otherwise or restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired. When restrictions are still applicable, the contractor is permitted to mark the data with the appropriate restrictive legend for which the data qualified.

(c) *Unmarked technical data.* (1) Technical data delivered or otherwise provided under a contract without restrictive markings shall be presumed to have been delivered with unlimited rights and may be released or disclosed without restriction. To the extent practicable, if a contractor has requested permission (see paragraph (c)(2) of this subsection) to correct an inadvertent omission of markings, do not release or disclose the technical data pending evaluation of the request.

(2) A contractor may request permission to have appropriate legends placed on unmarked technical data at its expense. The request must be received by the contracting officer within six months following the furnishing or delivery of such data, or any extension of that time approved by the contracting officer. The person making the request must:

(i) Identify the technical data that should have been marked;

(ii) Demonstrate that the omission of the marking was inadvertent, the proposed marking is justified and conforms with the requirements for the marking of technical data contained in the clause at 252.227–7013; and

(iii) Acknowledge, in writing, that the Government has no liability with respect to any disclosure, reproduction, or use of the technical data made prior to the addition of the marking or resulting from the omission of the marking.

(3) Contracting officers should grant permission to mark only if the technical data were not distributed outside the Government or were distributed outside the Government with restrictions on further use or disclosure.

227.7103–11 Contractor procedures and records.

(a) The clause at 252.227–7013, Rights in Technical Data—Noncommercial Items, requires a contractor, and its subcontractors or suppliers that will deliver technical data with other than unlimited rights, to establish and follow written procedures to assure that restrictive markings are used only when authorized and to maintain

records to justify the validity of asserted restrictions on delivered data.

(b) The clause at 252.227–7037, Validation of Restrictive Markings on Technical Data requires contractors and their subcontractors at any tier to maintain records sufficient to justify the validity of restrictive markings on technical data delivered or to be delivered under a Government contract.

227.7103–12 Government right to establish conformity of markings.

(a) *Nonconforming markings.* (1) Authorized markings are identified in the clause at 252.227–7013, Rights in Technical Data—Noncommercial Items. All other markings are nonconforming markings. An authorized marking that is not in the form, or differs in substance, from the marking requirements in the clause at 252.227–7013 is also a nonconforming marking.

(2) The correction of nonconforming markings on technical data is not subject to 252.227–7037, Validation of Restrictive Markings on Technical Data. To the extent practicable, the contracting officer should return technical data bearing nonconforming markings to the person who has placed the nonconforming markings on such data to provide that person an opportunity to correct or strike the nonconforming marking at that person's expense. If that person fails to correct the nonconformity and return the corrected data within 60 days following the person's receipt of the data, the contracting officer may correct or strike the nonconformity at that person's expense. When it is impracticable to return technical data for correction, contracting officers may unilaterally correct any nonconforming markings at Government expense. Prior to correction, the data may be used in accordance with the proper restrictive marking.

(b) *Unjustified markings.* (1) An unjustified marking is an authorized marking that does not depict accurately restrictions applicable to the Government's use, modification, reproduction, release, performance, display, or disclosure of the marked technical data. For example, a limited rights legend placed on technical data pertaining to items, components, or processes that were developed under a Government contract either exclusively at Government expense or with mixed funding (situations under which the Government obtains unlimited or government purpose rights) is an unjustified marking.

(2) Contracting officers have the right to review and challenge the validity of unjustified markings. However, at any time during performance of a contract and notwithstanding existence of a challenge, the contracting officer and the person who has asserted a restrictive marking may agree that the restrictive marking is not justified. Upon such agreement, the contracting officer may, at his or her election, either—

(i) Strike or correct the unjustified marking at that person's expense; or

(ii) Return the technical data to the person asserting the restriction for correction at that person's expense. If the data are returned and that person fails to correct or strike the unjustified restriction and return the corrected data to the contracting officer within 60 days following receipt of the data, the unjustified marking shall be corrected or stricken at that person's expense.

227.7103–13 Government right to review, verify, challenge and validate asserted restrictions.

(a) *General.* An offeror's assertion(s) of restrictions on the Government's rights to use, modify, reproduce, release, or disclose technical data do not, by themselves, determine the extent of the Government's rights in the technical data. Under 10 U.S.C. 2321, the Government has the right to challenge asserted restrictions when there are reasonable grounds to question the validity of the assertion and continued adherence to the assertion would make it impractical to later procure competitively the item to which the data pertain.

(b) *Pre-award considerations.* The challenge procedures required by 10 U.S.C. 2321 could significantly delay awards under competitive procurements. Therefore, avoid challenging asserted restrictions prior to a competitive contract award unless resolution of the assertion is essential for successful completion of the procurement.

(c) *Challenge and validation.* Contracting officers must have reasonable grounds to challenge the current validity of an asserted restriction. Before issuing a challenge to an asserted restriction, carefully consider all available information pertaining to the assertion. All challenges must be made in accordance with the provisions of the clause at 252.227–7037, Validation of Restrictive Markings on Technical Data.

(1) *Challenge period.* Asserted restrictions should be reviewed before acceptance of technical data deliverable under the contract. Assertions must be challenged within three years after final payment under the contract or three years after delivery of the data, whichever is later. However, restrictive markings may be challenged at any time if the technical data—

(i) Are publicly available without restrictions;

(ii) Have been provided to the United States without restriction; or

(iii) Have been otherwise made available without restriction other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data to another party or the sale or transfer of some or all of a business entity or its assets to another party.

(2) *Pre-challenge requests for information.* (i) After consideration of the situation described in paragraph (c)(3) of this subsection, contracting officers may request the person asserting a restriction to furnish a written explanation of the facts and supporting documentation for the assertion in sufficient detail to enable the contracting officer to ascertain the basis of the restrictive markings. Additional supporting documentation may be requested when the explanation provided by the person making the assertion does not, in the contracting officer's opinion, establish the validity of the assertion.

(ii) If the person asserting the restriction fails to respond to the contracting officer's request for information or additional supporting documentation, or if the information submitted or any other available information pertaining to the validity of a restrictive marking does not justify the asserted restriction, a challenge should be considered.

(3) *Transacting matters directly with subcontracts.* The clause at 252.227–7037 obtains the contractor's agreement that the Government may transact matters under the clause directly with a subcontractor, at any tier, without creating or implying privity of contract. Contracting officers should permit a subcontractor or supplier to transact challenge and validation matters directly with the Government when—

(i) A subcontractor's or supplier's business interests in its technical data would be compromised if the data were disclosed to a higher tier contractor;

(ii) There is reason to believe that the contractor will not respond in a timely manner to a challenge and an untimely response would jeopardize a subcontractor's or suppliers right to assert restrictions; or

(iii) Requested to do so by a subcontractor or supplier.

(4) *Challenge notice.* Do not issue a challenge notice unless there are reasonable grounds to question the validity of an assertion. Assertions may be challenged whether or not supporting documentation was requested from the person asserting the restriction. Challenge notices must be in writing and issued to the contractor or, after consideration of the situations described in paragraph (c)(3) of this subsection, the person asserting the restriction. The challenge notice must include the information in paragraph (e) of the clause at 252.227–7037.

(5) *Extension of response time.* The contracting officer, at his or her discretion, may extend the time for response contained in a challenge notice, as appropriate, if the contractor submits a timely written request showing the need for additional time to prepare a response.

(6) *Contracting officer's final decision.* Contracting officers must issue a final decision for each challenged assertion, whether or not the assertion has been justified.

(i) A contracting officer's final decision that an assertion is not justified must be issued a soon as practicable following the failure of the person asserting the restriction to respond to the contracting officer's challenge within 60 days, or any extension to

that time granted by the contracting officer.

(ii) A contracting officer who, following a challenge and response by the person asserting the restriction, determines that an asserted restriction is justified, shall issue a final decision sustaining the validity of the asserted restriction. If the asserted restriction was made subsequent to submission of the contractor's offer, add the asserted restriction to the contract attachment.

(iii) A contracting officer who determine that the validity of an asserted restriction has not been justified shall issue a contracting officer's final decision within the time frames prescribed in 252.227–7037. As provided in paragraph (g) of that clause, the Government is obligated to continue to respect the asserted restrictions through final disposition of any appeal unless the agency head notifies the person asserting the restriction that urgent or compelling circumstances do not permit the Government to continue to respect the asserted restriction.

(7) *Multiple challenges to an asserted restriction.* When more than one contracting officer challenges an asserted restriction, the contracting officer who made the earliest challenge is responsible for coordinating the Government challenges. That contracting officer shall consult with all other contracting officers making challenges, verify that all challenges apply to the same asserted restriction and, after consulting with the contractor, subcontractor, or supplier asserting the restriction, issue a schedule that provides that person a reasonable opportunity to respond to each challenge.

(8) *Validation.* Only a contracting officer's final decision, or actions of an agency board of contract appeals or a court of competent jurisdiction, that sustain the validity of an asserted restriction constitute validation of the asserted restriction.

227.7103–14 Conformity, acceptance, and warranty of technical data.

(a) *Statutory requirements.* 10 U.S.C. 2320—

(1) Requires contractors to furnish written assurance, at the time technical data are delivered or are made available to the Government, that the technical data are complete, accurate, and satisfy the requirements of the contract concerning such data;

(2) Provides for the establishment of remedies applicable to technical data found to be incomplete, inadequate, or not to satisfy the requirements of the contract concerning such data; and

(3) Authorizes agency heads to withhold payments (or exercise such other remedies an agency head considers appropriate) during any period if the contractor does not meet the requirements of the contract pertaining to the delivery of technical data.

(b) *Conformity and acceptance.* (1) Solicitations and contracts requiring the delivery of technical data shall specify the requirements the data must satisfy to be acceptable. Contracting officers, or their authorized representatives, are responsible for determining whether technical data tendered for acceptance conform to the contractual requirements.

(2) The clause at 252.227–7030, Technical Data—Withholding of Payment, provides for withholding up to 10 percent of the contract price pending correction or replacement of the nonconforming technical data or negotiation of an equitable reduction in contract price. The amount subject to withholding may be expressed as a fixed dollar amount or as a percentage of the contract price. In either case, the amount shall be determined giving consideration to the relative value and importance of the data. For example—

(i) When the sole purpose of a contract is to produce the data, the relative value of that data may be considerably higher than the value of data produced under a contract where the production of the data is a secondary objective; or

(ii) When the Government will maintain or repair items, repair and maintenance data may have a considerably higher relative value than data that merely describe the item or provide performance characteristics.

(3) Do not accept technical data that do not conform to the contractual requirements in all respects. Except for nonconforming restrictive markings (see paragraph (b)(4) of this subsection), correction or replacement of

nonconforming data or an equitable reduction in contract price when correction or replacement of the nonconforming data is not practicable or is not in the Government's interests, shall be accomplished in accordance with—

(i) The provisions of a contract clause providing for inspection and acceptance of deliverables and remedies for nonconforming deliverables; or

(ii) The procedures at FAR 46.407(c) through (g), if the contract does not contain an inspection clause providing remedies for nonconforming deliverables.

(4) Follow the procedures at 227.7103–12(a)(2) if nonconforming markings are the sole reason technical data fail to conform to contractual requirements. The clause at 252.227–7030 may be used to withhold an amount for payment, consistent with the terms of the clause, pending correction of the nonconforming markings.

(c) *Warranty*. (1) The intended use of the technical data and the cost, if any, to obtain the warranty should be considered before deciding to obtain a data warranty (see FAR 46.703). The fact that a particular item, component, or process is or is not warranted is not a consideration in determining whether or not to obtain a warranty for the technical data that pertain to the item, component, or process. For example, a data warranty should be considered if the Government intends to repair or maintain an item and defective repair or maintenance data would impair the Government's effective use of the item or result in increased costs to the Government.

(2) As prescribed in 246.710, use the clause at 252.246–7001, Warranty of Data, and its alternates, or a substantially similar clause when the Government needs a specific warranty of technical data.

227.7103–15 Subcontractor rights in technical data.

(a) 10 U.S.C. 2320 provides subcontractors at all tiers the same protection for their rights in data as is provided to prime contractors. The clauses at 252.227–7013, Rights in Technical Data—Noncommercial Items, and 252.227–7037, Validation of Restrictive Markings on Technical Data, implement the statutory requirements.

(b) 10 U.S.C. 2321 permits a subcontractor to transact directly with the Government matters relating to the validation of its asserted restrictions on the Government's rights to use or disclose technical data. The clause at 252.227–7037 obtains a contractor's agreement that the direct transaction of validation or challenge matters with subcontractors at any tier does not establish or imply privity of contract. When a subcontractor or supplier exercise its right to transact validation matters directly with the Government, contracting officers shall deal directly with such persons, as provided at 227.7103–13(c)(3).

(c) Require prime contractors whose contracts include the following clauses to include those clauses, without modification except for appropriate identification of the parties, in contracts with subcontractors or suppliers, at all tiers, who will be furnishing technical data for non-commercial items in response to a Government requirement:

(1) 252.227–7013, Rights in Technical Data—Noncommercial Items;

(2) 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;

(3) 252.227–7028, Technical Data or Computer Software Previously Delivered to the Government; and

(4) 252.227–7037, Validation of Restrictive Markings on Technical Data.

(d) Do not require contractors to have their subcontractors or suppliers at any tier relinquish rights in technical data to the contractor, a higher tier subcontractor, or to the Government, as a condition for award of any contract, subcontract, purchase order, or similar instrument except for the rights obtained by the Government under the Rights in Technical Data—Noncommercial Items clause contained in the contractor's contract with the Government.

[56 FR 36389, July 31, 1991, as amended at 60 FR 61598, Nov. 30, 1995]

227.7103–16 Providing technical data to foreign governments, foreign contractors, or international organizations.

Technical data may be released or disclosed to foreign governments, foreign contractors, or international organizations only if release or disclosure is otherwise permitted both by Federal export controls and other national security laws or regulations. Subject to such laws and regulations, the Department of Defense—

(a) May release or disclose technical data in which it has obtained unlimited rights to such foreign entities or authorize the use of such data by those entities; and

(b) Shall not release or disclose technical data for which restrictions on use, release, or disclosure have been asserted to foreign entities, or authorize the use of technical data by those entities, unless the intended recipient is subject to the same provisions as included in the use and non-disclosure agreement at 227.7103–7 and the requirements of the clause at 252.227–7103, Rights in Technical Data—Noncommercial Items, governing use, modification, reproduction, release, performance, display, or disclosure of such data have been satisfied.

227.7103–17 Overseas contracts with foreign sources.

(a) The clause at 252.227–7032, Rights in Technical Data and Computer Software (Foreign), may be used in contracts with foreign contractors to be performed overseas, except Canadian purchases (see paragraph (c) of this subsection), in lieu of the clause at 252.227–7013, Rights in Technical Data—Noncommercial Items, when the Government requires the unrestricted right to use, modify, reproduce, perform, display, release or disclose all technical data to be delivered under the contract. Do not use the clause in contracts for existing or special works.

(b) When the Government does not require unlimited rights, the clause at 252.227–7032 may be modified to accommodate the needs of a specific overseas procurement situation. The Government should obtain rights in the technical data that are not less than the rights the Government would have obtained under the data rights clause(s) prescribed in this part for a comparable procurement performed within the United States or its possessions.

(c) Contracts for Canadian purchases shall include the appropriate data rights clause prescribed in this part for a comparable procurement performed within the United States or its possessions.

227.7104 Contracts under the Small Business Innovation Research (SBIR) Program.

(a) Use the clause at 252.227–7018, Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program, when technical data or computer software will be generated during performance of contracts under the SBIR program.

(b) Under the clause at 252.227–7018, the Government obtains a royalty-free license to use technical data marked with an SBIR data rights legend only for government purposes during the period commencing with contract award and ending five years after completion of the project under which the data were generated. Upon expiration of the five-year restrictive license, the Government has unlimited rights in the SBIR data. During the license period, the Government may not release or disclose SBIR data to any person other than its support services contractors except—

(1) For evaluational purposes;

(2) As expressly permitted by the contractor; or

(3) A use, release, or disclosure that is necessary for emergency repair or overhaul of items operated by the Government.

(c) Do not make any release or disclosure permitted by paragraph (b) of this section unless, prior to release or disclosure, the intended recipient is subject to the use and nondisclosure agreement at 227.7103–7.

(d) Use the clause at 252.227–7018 with its Alternate I in research contracts when the contracting officer determines, in consultation with counsel, that public dissemination by the contractor would be—

(1) In the interest of the Government; and

(2) Facilitated by the Government relinquishing its right to publish the work for sale, or to have others publish the work for sale on behalf of the Government.

(e) Use the following provision and clauses in SBIR solicitations and contracts that include the clause at 252.227–7018:

(1) 252.227–7016, Rights in Bid or Proposal Information;

(2) 252.227–7017, Identification and Assertion of Use, Release, or Disclosure Restrictions;

(3) 252.227–7019, Validation of Asserted Restrictions—Computer Software;

(4) 252.227–7030, Technical Data—Withholding of Payment;

(5) 252.227–7036, Declaration of Technical Data Conformity; and

(6) 252.227–7037, Validation of Restrictive Markings on Technical Data (paragraph (e) of the clause contains information that must be included in a challenge).

(f) Use the following clauses and provision in SBIR solicitations and contracts in accordance with the guidance at 227.7103–6 (c) and (d):

(1) 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends; and

(2) 252.227–7028, Technical Data or Computer Software Previously Delivered to the Government.

[56 FR 36389, July 31, 1991, as amended at 60 FR 61598, Nov. 30, 1995; 62 FR 2614, Jan. 17, 1997]

227.7105 Contracts for the acquisition of existing works.

227.7105–1 General.

(a) Existing works include motion pictures, television recordings, video recordings, and other audiovisual works in any medium; sound recordings in any medium; musical, dramatic, and literary works; pantomimes and choreographic works; pictorial, graphic, and sculptural works; and works of a similar nature. Usually, these or similar works were not first created, developed, generated, originated, prepared, or produced under a Government contract. Therefore, the Government must obtain a license in the work if it intends to reproduce the work, distribute copies of the work, prepare derivative works, or perform or display the work publicly. When the Government is not responsible for the content of an existing work, it should require the copyright owner to indemnify the Government for liabilities that may arise out of the content, performance, use, or disclosure of such data.

(b) Follow the procedures at 227.7106 for works which will be first created, developed, generated, originated, prepared, or produced under a Government contract and the Government needs to control distribution of the work or has a specific need to obtain indemnity for liabilities that may arise out of the creation, content, performance, use, or disclosure of the work or from libelous or other unlawful material contained in the work. Follow the procedures at 227.7103 when the Government does not need to control distribution of such works or obtain such indemnities.

227.7105–2 Acquisition of existing works without modification

(a) Use the clause at 252.227–7021, Rights in Data—Existing Works, in lieu of the clause at 252.227–7013, Rights in Technical Data—Noncommercial Items, in solicitations and contracts exclusively for existing works when—

(1) The existing works will be acquired without modification; and

(2) The Government requires the right to reproduce, prepare derivative works, or publicly perform or display the existing works; or

(3) The Government has a specific need to obtain indemnity for liabilities that may arise out of the content, performance, use, or disclosure of such data.

(b) The clause at 252.227–7021 provides the Government, and others acting on its behalf, a paid-up, non-exclusive, irrevocable, world-wide license to reproduce, prepare derivative works and publicly perform or display the works called for by a contract and to authorize others to do so for government purposes.

(c) A contract clause is not required to acquire existing works such as books, magazines and periodicals, in any storage or retrieval medium, when the Government will not reproduce the

books, magazines or periodicals, or prepare derivative works.

227.7105–3 Acquisition of modified existing works.

Use the clause at 252.227–7020, Rights in Special Works, in solicitations and contracts for modified existing works in lieu of the clause at 252.227–7021, Rights in Data—Existing Works.

227.7106 Contracts for special works.

(a) Use the clause at 252.227–7020, Rights in Special Works, in solicitations and contracts where the Government has a specific need to control the distribution of works first produced, created, or generated in the performance of a contract and required to be delivered under that contract, including controlling distribution by obtaining an assignment of copyright, or a specific need to obtain indemnity for liabilities that may arise out of the creation, delivery, use, modification, reproduction, release, performance, display, or disclosure of such works. Use the clause—

(1) In lieu of the clause at 252.227–7013, Rights in Technical Data—Noncommercial Items, when the Government must own or control copyright in all works first produced, created, or generated and required to be delivered under a contract; or

(2) In addition to the clause at 252.227–7013 when the Government must own or control copyright in a portion of a work first produced, created, or generated and required to be delivered under a contract. The specific portion in which the Government must own or control copyright must be identified in a special contract requirement.

(b) Although the Government obtains an assignment of copyright and unlimited rights in a special work under the clause at 252.227–7020, the contractor retains use and disclosure rights in that work. If the Government needs to restrict a contractor's rights to use or disclose a special work, it must also negotiate a special license which specifically restricts the contractor's use or disclosure rights.

(c) The clause at 252.227–7020 does not permit a contractor to incorporate into a special work any works copyrighted by others unless the contractor obtains the contracting officer's permission to do so and obtains for the Government a non-exclusive, paid up, world-wide license to make and distribute copies of that work, to prepare derivative works, to perform or display publicly any portion of the work, and to permit others to do so for government purposes. Grant permission only when the Government's requirements cannot be satisfied unless the third party work is included in the deliverable work.

(d) Examples of works which may be procured under the Rights in Special Works clause include, but are not limited, to audiovisual works, computer data bases, computer software documentation, scripts, soundtracks, musical compositions, and adaptations; histories of departments, agencies, services or units thereof; surveys of Government establishments; instructional works or guidance to Government officers and employees on the discharge of their official duties; reports, books, studies, surveys or similar documents; collections of data containing information pertaining to individuals that, if disclosed, would violate the right of privacy or publicity of the individuals to whom the information relates; or investigative reports.

227.7107 Contracts for architect-engineer services.

This section sets forth policies and procedures, pertaining to data, copyrights, and restricted designs unique to the acquisition of construction and architect-engineer services.

227.7107–1 Architectural designs and data clauses for architect-engineer or construction contracts.

(a) Except as provided in paragraph (b) of this subsection and in 227.7107–2, use the clause at 252.227–7022, Government Rights (Unlimited), in solicitations and contracts for architect-engineer services and for construction involving architect-engineer services.

(b) When the purpose of a contract for architect-engineer services, or for construction involving architect-engineer services, is to obtain a unique architectural design of a building, a monument, or construction of similar nature, which for artistic, aesthetic or other special reasons the Government

does not want duplicated, the Government may acquire exclusive control of the data pertaining to the design by including the clause at 252.227–7023, Drawings and Other Data to Become Property of Government, in solicitations and contracts.

(c) The Government shall obtain unlimited rights in shop drawings for construction. In solicitations and contracts calling for delivery of shop drawings, include the clause at 252.227–7033, Rights in Shop Drawings.

227.7107–2 Contracts for construction supplies and research and development work.

Use the provisions and clauses required by 227–7103–6 and 227.7203–6 when the acquisition is limited to—

(a) Construction supplies or materials;

(b) Experimental, developmental, or research work, or test and evaluation studies of structures, equipment, processes, or materials for use in construction; or

(c) Both.

227.7107–3 Approval of restricted designs.

The clause at 252.227–7024, Notice and Approval of Restricted Designs, may be included in architect-engineer contracts to permit the Government to make informed decisions concerning noncompetitive aspects of the design.

227.7108 Contractor data repositories.

(a) Contractor data repositories may be established when permitted by agency procedures. The contractual instrument establishing the data repository must require, as a minimum, the data repository management contractor to—

(1) Establish and maintain adequate procedures for protecting technical data delivered to or stored at the repository from unauthorized release or disclosure;

(2) Establish and maintain adequate procedures for controlling the release or disclosure of technical data from the repository to third parties consistent with the Government's rights in such data;

(3) When required by the contracting officer, deliver data to the Government on paper or in other specified media;

(4) Be responsible for maintaining the currency of data delivered directly by Government contractors or subcontractors to the repository;

(5) Obtain use and non-disclosure agreements (see 227.7103–7) from all persons to whom government purpose rights data is released or disclosed; and

(6) Indemnify the Government from any liability to data owners or licensors resulting from, or as a consequence of, a release or disclosure of technical data made by the data repository contractor or its officers, employees, agents, or representatives.

(b) If the contractor is or will be the data repository manager, the contractor's data management and distribution responsibilities must be identified in the contract or the contract must reference the agreement between the Government and the contractor that establishes those responsibilities.

(c) If the contractor is not and will not be the data repository manager, do not require a contractor or subcontractor to deliver technical data marked with limited rights legends to a data repository managed by another contractor unless the contractor or subcontractor who has asserted limited rights agrees to release the data to the repository or has authorized, in writing, the Government to do so.

(d) Repository procedures may provide for the acceptance, delivery, and subsequent distribution of technical data in storage media other than paper, including direct electronic exchange of data between two computers. The procedures must provide for the identification of any portions of the data provided with restrictive legends, when appropriate. The acceptance criteria must be consistent with the authorized delivery format.

Subpart 227.72—Rights in Computer Software and Computer Software Documentation

SOURCE: 60 FR 33482, June 28, 1995, unless otherwise noted.

227.7200 Scope of subpart.

This subpart—

(a) Prescribes policies and procedures for the acquisition of computer software and computer software documentation, and the rights to use, modify, reproduce, release, perform, display, or disclose such software or documentation. It implements requirements in the following laws and Executive Order:

(1) 10 U.S.C. 2302(4).

(2) 10 U.S.C. 2305 (subsection (d)(4)).

(3) 10 U.S.C. 2320.

(4) 10 U.S.C. 2321.

(5) 10 U.S.C. 2325.

(6) Executive Order 12591 (subsection 1(b)(6)).

(b) Does not apply to computer software or computer software documentation acquired under GSA schedule contracts.

227.7201 Definitions.

(a) As used in this subpart, unless otherwise specifically indicated, the terms ''offeror'' and ''contractor'' include an offeror's or contractor's subcontractors, suppliers, or potential subcontractors or suppliers at any tier.

(b) Other terms used in this subpart are defined in the clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation.

227.7202 Commercial computer software and commercial computer software documentation.

227.7202–1 Policy.

(a) Commercial computer software or commercial computer software documentation shall be acquired under the licenses customarily provided to the public unless such licenses are inconsistent with Federal procurement law or do not otherwise satisfy user needs.

(b) Commercial computer software and commercial computer software documentation shall be obtained competitively, to the maximum extent practicable, using firm-fixed-price contracts or firm-fixed-priced orders under available pricing schedules.

(c) Offerors and contractors shall not be required to—

(1) Furnish technical information related to commercial computer software or commercial computer software documentation that is not customarily provided to the public except for information documenting the specific modifications made at Government expense to such software or documentation to meet the requirements of a Government solicitation; or

(2) Relinquish to, or otherwise provide, the Government rights to use, modify, reproduce, release, perform, display, or disclose commercial computer software or commercial computer software documentation except for a transfer of rights mutually agreed upon.

227.7202–2 [Reserved]

227.7202–3 Rights in commercial computer software or commercial computer software documentation.

(a) The Government shall have only the rights specified in the license under which the commercial computer software or commercial computer software documentation was obtained.

(b) If the Government has a need for rights not conveyed under the license customarily provided to the public, the Government must negotiate with the contractor to determine if there are acceptable terms for transferring such rights. The specific rights granted to the Government shall be enumerated in the contract license agreement or an addendum thereto.

227.7202–4 Contract clause.

A specific contract clause governing the Government's rights in commercial computer software or commercial computer software documentation is not prescribed. As required by 227.7202–3, the Government's rights to use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation shall be identified in a license agreement.

227.7203 Noncommercial computer software and noncommercial computer software documentation.

227.7203–1 Policy.

(a) DoD policy is to acquire only the computer software and computer software documentation, and the rights in such software or documentation, necessary to satisfy agency needs.

(b) Solicitations and contracts shall—

(1) Specify the computer software or computer software documentation to be delivered under a contract and the delivery schedules for the software or documentation;

(2) Establish or reference procedures for determining the acceptability of computer software or computer software documentation;

(3) Establish separate contract line items, to the extent practicable, for the computer software or computer software documentation to be delivered under a contract and require offerors and contractors to price separately each deliverable data item; and

(4) Require offerors to identify, to the extent practicable, computer software or computer software documentation to be furnished with restrictions on the Government's rights and require contractors to identify computer software or computer software documentation to be delivered with such restrictions prior to delivery.

(c) Offerors shall not be required, either as a condition of being responsive to a solicitation or as a condition for award, to sell or otherwise relinquish to the Government any rights in computer software developed exclusively at private expense except for the software identified at 227.7203–5(a) (3) through (6).

(d) Offerors and contractors shall not be prohibited or discouraged from furnishing or offering to furnish computer software developed exclusively at private expense solely because the Government's rights to use, modify, release, reproduce, perform, display, or disclose the software may be restricted.

227.7203–2 Acquisition of noncommercial computer software and computer software documentation.

(a) Contracting officers shall work closely with data managers and requirements personnel to assure that computer software and computer software documentation requirements included in solicitations are consistent with the policy expressed in 227.7203–1.

(b)(1) Data managers or other requirements personnel are responsible for identifying the Government's minimum needs. In addition to desired software performance, compatibility, or other technical considerations, needs determinations should consider such factors as multiple site or shared use requirements, whether the Government's software maintenance philosophy will require the right to modify or have third parties modify the software, and any special computer software documentation requirements.

(2) When reviewing offers received in response to a solicitation or other request for computer software or computer software documentation, data managers must balance the original assessment of the Government's needs with prices offered.

(c) Contracting officers are responsible for ensuring that, wherever practicable, solicitations and contracts—

(1) Identify the types of computer software and the quantity of computer programs and computer software documentation to be delivered, any requirements for multiple users at one site or multiple site licenses, and the format and media in which the software or documentation will be delivered;

(2) Establish each type of computer software or computer software documentation to be delivered as a separate contract line item (this requirement may be satisfied by an exhibit to the contract);

(3) Identify the prices established for each separately priced deliverable item of computer software or computer software documentation under a fixed-price type contract;

(4) Include delivery schedules and acceptance criteria for each deliverable item; and

(5) Specifically identify the place of delivery for each deliverable item.

227.7203–3 Early identification of computer software or computer software documentation to be furnished to the Government with restrictions on use, reproduction or disclosure.

(a) Use the provision at 252.227–7017, Identification and Assertion of Use, Release, or Disclosure Restrictions, in all solicitation that include the clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation. The provision requires offerors to identify any computer software or computer software documentation for

which restrictions, other than copyright, on use, modification, reproduction, release, performance, display, or disclosure are asserted and to attach the identification and assertion to the offer.

(b) Subsequent to contract award, the clause at 252.227–7014 permits a contractor, under certain conditions, to make additional assertions of restrictions. The prescriptions for the use of that clause and its alternates are at 227.7203–6(a).

227.7203–4 License rights.

(a) *Grant of license.* The Government obtains rights in computer software or computer software documentation, including a copyright license, under an irrevocable license granted or obtained by the contractor which developed the software or documentation or the licensor of the software or documentation if the development contractor is not the licensor. The contractor or licensor retains all rights in the software or documentation not granted to the Government. The scope of a computer software license is generally determined by the source of funds used to develop the software. Contractors or licensors may, with some exceptions, restrict the Government's rights to use, modify, reproduce, release, perform, display, or disclose computer software developed exclusively or partially at private expense (see 227.7203–5 (b) and (c)). They may not, without the Government's agreement (see 227.7203–5(d)), restrict the Government's rights in computer software developed exclusively with Government funds or in computer software documentation required to be delivered under a contract.

(b) *Source of funds determination.* The determination of the source of funds used to develop computer software should be made at the lowest practicable segregable portion of the software or documentation (e.g., a software sub-routine that performs a specific function). Contractors may assert restricted rights in a segregable portion of computer software which otherwise qualifies for restricted rights under the clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation.

227.7203–5 Government rights.

The standard license rights in computer software that a licensor grants to the Government are unlimited rights, government purpose rights, or restricted rights. The standard license in computer software documentation conveys unlimited rights. Those rights are defined in the clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation. In unusual situations, the standard rights may not satisfy the Government's needs or the Government may be willing to accept lesser rights in return for other consideration. In those cases, a special license may be negotiated. However, the licensor is not obligated to provide the Government greater rights and the contracting officer is not required to accept lesser rights than the rights provided in the standard grant of license. The situations under which a particular grant of license applies are enumerated in paragraphs (a) through (d) of this subsection.

(a) *Unlimited rights.* The Government obtains an unlimited rights license in—

(1) Computer software developed exclusively with Government funds;

(2) Computer software documentation required to be delivered under a Government contract;

(3) Corrections or changes to computer software or computer software documentation furnished to the contractor by the Government;

(4) Computer software or computer software documentation that is otherwise publicly available or has been released or disclosed by the contractor or subcontractor without restrictions on further use, release or disclosure other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the software to another party or the sale or transfer of some or all of a business entity or it assets to another party;

(5) Computer software or computer software documentation obtained with unlimited rights under another Government contract or as a result of negotiations; or

(6) Computer software or computer software documentation furnished to

the Government, under a Government contract or subcontract with—

(i) Restricted rights in computer software, limited rights in technical data, or government purpose license rights and the restrictive conditions have expired; or

(ii) Government purpose rights and the contractor's exclusive right to use such software or documentation for commercial purposes has expired.

(b) *Government purpose rights.* (1) Except as provided in paragraph (a) of this subsection, the Government obtains government purpose rights in computer software developed with mixed funding.

(2) The period during which government purpose rights are effective is negotiable. The clause at 252.227–7014 provides a nominal five-year period. Either party may request a different period. Changes to the government purpose rights period may be made at any time prior to delivery of the software without consideration from either party. Longer periods should be negotiated when a five-year period does not provide sufficient time to commercialize the software or, for software developed by subcontractors, when necessary to recognize the subcontractors' interests in the software.

(3) The government purpose rights period commences upon execution of the contract, subcontract, letter contract (or similar contractual instrument), contract modification, or option exercise that required development of the computer software. Upon expiration of the government purpose rights period, the Government has unlimited rights in the software including the right to authorize others to use data for commercial purposes.

(4) During the government purpose rights period, the Government may not use, or authorize other persons to use, computer software marked with government purpose rights legends for commercial purposes. The Government shall not release or disclose, or authorize others to release or disclose, computer software in which it has government purpose rights to any person unless—

(i) Prior to release or disclosure, the intended recipient is subject to the use and non-disclosure agreement at 227.7103–7; or

(ii) The intended recipient is a Government contractor receiving access to the software for performance of a Government contract that contains the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(5) When computer software marked with government purpose rights legends will be released or disclosed to a Government contractor performing a contract that does not include the clause at 252.227–7025, the contract may be modified, prior to release or disclosure, to include such clause in lieu of requiring the contractor to complete a use and non-disclosure agreement.

(6) Contracting activities shall establish procedures to assure that computer software or computer software documentation marked with government purpose rights legends are released or disclosed, including a release or disclosure through a Government solicitation, only to persons subject to the use and non-disclosure restrictions. Public announcements in the Commerce Business Daily or other publications must provide notice of the use and non-disclosure requirements. Class use and non-disclosure agreements (e.g., agreements covering all solicitations received by the XYZ company within a reasonable period) are authorized and may be obtained at any time prior to release or disclosure of the government purpose rights software or documentation. Documents transmitting government purpose rights software or documentation to persons under class agreements shall identify the specific software or documentation subject to government purpose rights and the class agreement under which such software or documentation are provided.

(c) *Restricted rights.* (1) The Government obtains restricted rights in noncommercial computer software required to be delivered or otherwise provided to the Government under a contract that were developed exclusively at private expense.

(2) Contractors are not required to provide the Government additional rights in computer software delivered

or otherwise provided to the Government with restricted rights. When the Government has a need for additional rights, the Government must negotiate with the contractor to determine if there are acceptable terms for transferring such rights. List or describe all software in which the contractor has granted the Government additional rights in a license agreement made part of the contract (see paragraph (d) of this subsection). The license shall enumerate the specific additional rights granted to the Government.

(d) *Specifically negotiated license rights.* Negotiate specific licenses when the parties agree to modify the standard license rights granted to the Government or when the Government wants to obtain rights in computer software in which it does not have rights. When negotiating to obtain, relinquish, or increase the Government's rights in computer software, consider the planned software maintenance philosophy, anticipated time or user sharing requirements, and other factors which may have relevance for a particular procurement. If negotiating to relinquish rights in computer software documentation, consider the administrative burden associated with protecting documentation subject to restrictions from unauthorized release or disclosure. The negotiated license rights must stipulate the rights granted the Government to use, modify, reproduce, release, perform, display, or disclose the software or documentation and the extent to which the Government may authorize others to do so. Identify all negotiated rights in a license agreement made part of the contract.

(e) *Rights in derivative computer software or computer software documentation.* The clause at 252.227–7014 protects the Government's rights in computer software, computer software documentation, or portions thereof that the contractor subsequently uses to prepare derivative software or subsequently embeds or includes in other software or documentation. The Government retains the rights it obtained under the development contract in the unmodified portions of the derivative software or documentation.

227.7203–6 Contract clauses.

(a)(1) use the clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, in solicitations and contracts when the successful offeror(s) will be required to deliver computer software or computer software documentation. Do not use the clause when the only deliverable items are technical data (other than computer software documentation), commercial computer software or commercial computer software documentation, commercial items (see 227.7102–3), special works (see 227.7205), or contracts under the Small Business Innovative Research Program (see 227.7104), Except as provided in 227.7107–2, do not use the clause in architect-engineer and construction contracts..

(2) Use the clause at 252.227–7014 with its Alternate I in research contracts when the contracting officer determines, in consultation with counsel, that public dissemination by the contractor would be—

(i) In the interest of the Government; and

(ii) Facilitated by the Government relinquishing its right to publish the work for sale, or to have others publish the work for sale on behalf of the Government.

(b) Use the clause at 252.227–7016, Rights in Bid or Proposal Information, in solicitations and contracts that include the clause at 252.227–7014.

(c) Use the clause at 252.227–7019, Validation of Asserted Restrictions—Computer Software, in solicitations and contracts that include the clause at 252.227–7014. The clause provides procedures for the validation of asserted restrictions on the Government's rights to use, release, or disclose computer software.

(d) Use the provision at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, in solicitations and contracts when it is anticipated that the Government will provide the contractor, for performance of its contract, computer software or computer software documentation marked with another contractor's restrictive legend(s).

(e) Use the provision at 252.227–7028, Technical Data or Computer Software Previously Delivered to the Government, in solicitations when the resulting contract will require the contractor to deliver computer software or computer software documentation. The provision requires offerors to identify any software or documentation specified in the solicitation as deliverable items that are the same or substantially the same as software or documentation which the offeror has delivered or is obligated to deliver, either as a contractor or subcontractor, under any other federal agency contract.

(f) Use the clause at 252.227–7037, Validation of Restrictive Markings on Technical Data, in solicitations and contracts that include the clause at 252.227–7014 when the contractor will be required to deliver noncommercial computer software documentation (technical data). The clause implements statutory requirements under 10 U.S.C. 2321. Paragraph (e) of the clause contains information that must be included in a formal challenge.

227.7203–7 [Reserved]

227.7203–8 Deferred delivery and deferred ordering of computer software and computer software documentation.

(a) *Deferred delivery*. Use the clause at 252.227–7026, Deferred Delivery of Technical Data or Computer Software, when it is in the Government's interests to defer the delivery of computer software or computer software documentation. The clause permits the contracting officer to require the delivery of data identified as ''deferred delivery'' data or computer software at any time until two years after acceptance by the Government of all items (other than technical data or computer software) under the contract or contract termination, whichever is later. The obligation of subcontractors or suppliers to deliver such data expires two years after the date the prime contractor accepts the last item from the subcontractor or supplier for use in the performance of the contract. The contract must specify the computer software or computer software documentation that is subject to deferred delivery. The contracting officer shall notify the contractor sufficiently in advance of the desired delivery date for such software or documentation to permit timely delivery.

(b) *Deferred ordering.* Use the clause at 252.227–7027, Deferred Ordering of Technical Data or Computer Software, when a firm requirement for software or documentation has not been established prior to contract award but there is a potential need for computer software or computer software documentation. Under this clause the contracting officer may order any computer software or computer software documentation generated in the performance of the contract or any subcontract thereunder at any time until three years after acceptance of all items (other than technical data or computer software) under the contract or contract termination, whichever is later. The obligation of subcontractors to deliver such technical data or computer software expires three years after the date the contractor accepts the last item under the subcontract. When the software or documentation are ordered, the delivery dates shall be negotiated and the contractor compensated only for converting the software or documentation into the prescribed form, reproduction costs, and delivery costs.

227.7203–9 Copyright.

(a) *Copyright license.* (1) The clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, requires a contractor to grant, or obtain for the Government license rights which permit the Government to reproduce the software or documentation, distribute copies, perform or display the software or documentation and, through the right to modify data, prepare derivative works. The extent to which the Government, and others acting on its behalf, may exercise these rights varies for each of the standard data rights licenses obtained under the clause. When non-standard license rights in computer software or computer software documentation will be negotiated, negotiate the extent of the copyright license concurrent with negotiations for the data rights license. Do not negotiate copyright licenses for computer software that provide less

rights than the standard restricted rights in computer software license. For computer software documentation, do not negotiate a copyright license that provides less rights than the standard limited rights in technical data license.

(2) The clause at 252.227–7013, Rights in Technical Data—Noncommercial Items, does not permit a contractor to incorporate a third party's copyrighted software into a deliverable software item unless the contractor has obtained an appropriate license for the Government and, when applicable, others acting on the Government's behalf, or has obtained the contracting officer's written approval to do so. Grant approval to use third party copyrighted software in which the Government will not receive a copyright license only when the Government's requirements cannot be satisfied without the third party material or when the use of the third party material will result in cost savings to the Government which outweigh the lack of a copyright license.

(b) *Copyright considerations—special works.* See 227.7205 for copyright considerations when acquiring special works.

227.7203–10 Contractor identification and marking of computer software or computer software documentation to be furnished with restrictive markings.

(a) *Identification requirements.* (1) The solicitation provision at 252.227–7017, Identification and Assertion of Use, Release, or Disclosure Restrictions, requires offerors to identify, prior to contract award, any computer software or computer software documentation that an offeror asserts should be provided to the Government with restrictions on use, modification, reproduction, release or disclosure. This requirement does not apply to restrictions based solely on copyright. The notification and identification must be submitted as an attachment to the offer. If an offeror fails to submit the attachment or fails to complete the attachment in accordance with the requirements of the solicitation provision, such failure shall constitute a minor informality. Provide offerors an opportunity to remedy a minor informality in accordance with the procedures at FAR 14.405 or 15.607. An offeror's failure to correct an informality within the time prescribed by the contracting officer shall render the offer ineligible for award.

(2) The procedures for correcting minor informalities shall not be used to obtain information regarding asserted restrictions or an offeror's suggested asserted rights category. Questions regarding the justification for an asserted restriction or asserted rights category must be pursued in accordance with the procedures at 227.7203–13.

(3) The restrictions asserted by a successful offeror shall be attached to its contract unless, in accordance with the procedures at 227.7203–13, the parties have agreed that an asserted restriction is not justified. The contract attachment shall provide the same information regarding identification of the computer software or computer software documentation, the asserted rights category, the basis for the assertion, and the name of the person asserting the restrictions as required by paragraph (d) of the solicitation provision at 252.227–7017. Subsequent to contract award, the clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, permits a contractor to make additional assertions under certain conditions. The additional assertions must be made in accordance with the procedures and in the format prescribed by that clause.

(4) Neither the pre- or post-award assertions made by the contractor nor the fact that certain assertions are identified in the attachment to the contract, determine the respective rights of the parties. As provided at 227.7203–13, the Government has the right to review, verify, challenge and validate restrictive markings.

(5) Information provided by offerors in response to the solicitation provision at 252.227–7017 may be used in the source selection process to evaluate the impact on evaluation factors that may be created by restrictions on the Government's ability to use or disclose computer software or computer software documentation.

(b) *Contractor marking requirements.* The clause at 252.227–7014, Rights in Noncommercial Computer Software

and Noncommercial Computer Software Documentation—

(1) Requires a contractor who desires to restrict the Government's rights in computer software or computer software documentation to place restrictive markings on the software or documentation, provides instructions for the placement of the restrictive markings, and authorizes the use of certain restrictive markings. When it is anticipated that the software will or may be used in combat or situations which simulate combat conditions, do not permit contractors to insert instructions into computer programs that interfere with or delay operation of the software to display a restrictive rights legend or other license notice; and

(2) Requires a contractor to deliver, furnish, or otherwise provide to the Government any computer software or computer software documentation in which the Government has previously obtained rights with the Government's pre-existing rights in that software or documentation unless the parties have agreed otherwise or restrictions on the Government's rights to use, modify, produce, release, or disclose the software or documentation have expired. When restrictions are still applicable, the contractor is permitted to mark the software or documentation with the appropriate restrictive legend.

(c) *Unmarked computer software or computer software documentation.* (1) Computer software or computer software documentation delivered or otherwise provided under a contract without restrictive markings shall be presumed to have been delivered with unlimited rights and may be released or disclosed without restriction. To the extent practicable, if a contractor has requested permission (see paragraph (c)(2) of this subsection) to correct an inadvertent omission of markings, do not release or disclose the software or documentation pending evaluation of the request.

(2) A contractor may request permission to have appropriate legends placed on unmarked computer software or computer software documentation at its expense. The request must be received by the contracting officer within six months following the furnishing or delivery of such software or documentation, or any extension of that time approved by the contracting officer. The person making the request must—

(i) Identify the software or documentation that should have been marked;

(ii) Demonstrate that the omission of the marking was inadvertent, the proposed marking is justified and conforms with the requirements for the marking of computer software or computer software documentation contained in the clause at 252.227–7014; and

(iii) Acknowledge, in writing, that the Government has no liability with respect to any disclosure, reproduction, or use of the software or documentation made prior to the addition of the marking or resulting from the omission of the marking.

(3) Contracting officers should grant permission to mark only if the software or documentation were not distributed outside the Government or were distributed outside the Government with restrictions on further use or disclosure.

227.7203–11 Contractor procedures and records.

(a) The clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, requires a contractor, and its subcontractors or suppliers that will deliver computer software or computer software documentation with other than unlimited rights, to establish and follow written procedures to assure that restrictive markings are used only when authorized and to maintain records to justify the validity of restrictive markings.

(b) The clause at 252.227–7019, Validation of Asserted Restrictions—Computer Software, requires contractors and their subcontractors or suppliers at any tier to maintain records sufficient to justify the validity of markings that assert restrictions on the use, modification, reproduction, release, performance, display, or disclosure of computer software.

227.7203–12 Government right to establish conformity of markings.

(a) *Nonconforming markings.* (1) Authorized markings are identified in the

clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation. All other markings are nonconforming markings. An authorized marking that is not in the form, or differs in substance, from the marking requirements in the clause at 252.227–7014 is also a nonconforming marking.

(2) The correction of nonconforming markings on computer software is not subject to 252.227–7019, Validation of Asserted Restrictions—Computer Software, and the correction of nonconforming markings on computer software documentation (technical data) is not subject to 252.227–7037, Validation of Restrictive Markings on Technical Data. To the extent practicable, the contracting officer should return computer software or computer software documentation bearing nonconforming markings to the person who has placed the nonconforming markings on the software or documentation to provide that person an opportunity to correct or strike the nonconforming markings at that person's expense. If that person fails to correct the nonconformity and return the corrected software or documentation within 60 days following the person's receipt of the software or documentation, the contracting officer may correct or strike the nonconformity at the person's expense. When it is impracticable to return computer software or computer software documentation for correction, contracting officers may unilaterally correct any nonconforming markings at Government expense. Prior to correction, the software or documentation may be used in accordance with the proper restrictive marking.

(b) *Unjustified markings.* (1) An unjustified marking is an authorized marking that does not depict accurately restrictions applicable to the Government's use, modification, reproduction, release, or disclosure of the marked computer software or computer software documentation. For example, a restricted rights legend placed on computer software developed under a Government contract either exclusively at Government expense or with mixed funding (situations under which the Government obtains unlimited or government purpose rights) is an unjustified marking.

(2) Contracting officers have the right to review and challenge the validity of unjustified markings. However, at any time during performance of a contract and notwithstanding existence of a challenge, the contracting officer and the person who has asserted a restrictive marking may agree that the restrictive marking is not justified. Upon such agreement, the contracting officer may, at his or her election, either——

(i) Strike or correct the unjustified marking at that person's expense; or

(ii) Return the computer software or computer software documentation to the person asserting the restriction for correction at that person's expense. If the software or documentation are returned and that person fails to correct or strike the unjustified restriction and return the corrected software or documentation to the contracting officer within 60 days following receipt of the software or documentation, the unjustified marking shall be corrected or stricken at that person's expense.

227.7203–13 Government right to review, verify, challenge and validate asserted restrictions.

(a) *General.* An offeror's or contractor's assertion(s) of restrictions on the Government's rights to use, modify, reproduce, release, or disclose computer software or computer software documentation do not, by themselves, determine the extent of the Government's rights in such software or documentation. The Government may require an offeror or contractor to submit sufficient information to permit an evaluation of a particular asserted restriction and may challenge asserted restrictions when there are reasonable grounds to believe that an assertion is not valid.

(b) *Requests for information.* Contracting officers should have a reason to suspect that an asserted restriction might not be correct prior to requesting information. When requesting information, provide the offeror or contractor the reason(s) for suspecting that an asserted restriction might not

be correct. A need for additional license rights is not, by itself, a sufficient basis for requesting information concerning an asserted restriction. Follow the procedures at 227.7203–5(d) when additional license rights are needed but there is no basis to suspect that an asserted restriction might not be valid.

(c) *Transacting matters directly with subcontractors.* The clause at 252.227–7019, Validation of Asserted Restrictions—Computer Software, obtains the contractor's agreement that the Government may transact matters under the clause directly with a subcontractor or supplier, at any tier, without creating or implying privity of contract. Contracting officers should permit a subcontractor or supplier to transact challenge and validation matters directly with the Government when—

(1) A subcontractor's or supplier's business interests in its technical data would be compromised if the data were disclosed to a higher tier contractor.

(2) There is reason to believe that the contractor will not respond in a timely manner to a challenge and an untimely response would jeopardize a subcontractor's or supplier's right to assert restrictions; or

(3) Requested to do so by a subcontractor or supplier.

(d) *Challenging asserted restrictions*—(1) *Pre-award considerations.* The challenge procedures in the clause at 252.227–7019 could significantly delay competitive procurements. Therefore, avoid challenging asserted restrictions prior to a competitive contract award unless resolution of the assertion is essential for successful completion of the procurement.

(2) *Computer software documentation.* Computer software documentation is technical data. Challenges to asserted restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose computer software documentation must be made in accordance with the clause at 252.227–7037, Validation of Restrictive Markings on Technical Data, and the guidance at 227.7103–13. The procedures in the clause at 252.227–7037 implement requirements contained in 10 U.S.C. 2321. Resolution of questions regarding the validity of asserted restrictions using the process described at 227.7103–12(b)(2) is strongly encouraged.

(3) *Computer software.* (i) Asserted restrictions should be reviewed before acceptance of the computer software deliverable under a contract. The Government's right to challenge an assertion expires three years after final payment under the contract or three years after delivery of the software, whichever is later. Those limitations on the Government's challenge rights do not apply to software that is publicly available, has been furnished to the Government without restrictions, or has been otherwise made available without restrictions.

(ii) Contracting officers must have reasonable grounds to challenge the current validity of an asserted restriction. Before challenging an asserted restriction, carefully consider all available information pertaining to the asserted restrictions. Resolution of questions regarding the validity of asserted restrictions using the process described at 227.7203–12(b)(2) is strongly encouraged. After consideration of the situations described in paragraph (c) of this subsection, contracting officers may request the person asserting a restriction to furnish a written explanation of the facts and supporting documentation for the assertion in sufficient detail to enable the contracting officer to determine the validity of the assertion. Additional supporting documentation may be requested when the explanation provided by that person does not, in the contracting officer's opinion, establish the validity of the assertion.

(iii) Assertions may be challenged whether or not supporting documentation was requested. Challenges must be in writing and issued to the person asserting the restriction.

(4) *Extension of response time.* The contracting officer, at his or her discretion, may extend the time for response contained in a challenge, as appropriate, if the contractor submits a timely written request showing the need for additional time to prepare a response.

(e) *Validating or denying asserted restrictions.* (1) Contracting officers must promptly issue a final decision denying

or sustaining the validity of each challenged assertion unless the parties have agreed on the disposition of the assertion. When a final decision denying the validity of an asserted restriction is made following a timely response to a challenge, the Government is obligated to continue to respect the asserted restrictions through final disposition of any appeal unless the agency head notifies the person asserting the restriction that urgent or compelling circumstances do not permit the Government to continue to respect the asserted restriction. See 252.227–7019(g) for restrictions applicable following a determination of urgent and compelling circumstances.

(2) Only a contracting officer's final decision, or actions of an agency Board of Contract Appeals or a court of competent jurisdiction, that sustain the validity of an asserted restriction constitute validation of the restriction.

(f) *Multiple challenges to an asserted restriction*. When more than one contracting officer challenges an asserted restriction, the contracting officer who made the earliest challenge is responsible for coordinating the Government challenges. That contracting officer shall consult with all other contracting officers making challenges, verify that all challenges apply to the same asserted restriction and, after consulting with the contractor, subcontractor, or supplier asserting the restriction, issue a schedule that provides that person a reasonable opportunity to respond to each challenge.

227.7203–14 Conformity, acceptance, and warranty of computer software and computer software documentation.

(a) *Computer software documentation*. Computer software documentation is technical data. See 227.7103–14 for appropriate guidance and statutory requirements.

(b) *Computer software*. (1) *Conformity and acceptance*. Solicitations and contracts requiring the delivery of computer software shall specify the requirements the software must satisfy to be acceptable. Contracting officers, or their authorized representatives, are responsible for determining whether computer software tendered for acceptance conforms to the contractual requirements. Except for nonconforming restrictive markings (follow the procedures at 227.7203–12(a) if nonconforming markings are the sole reason computer software tendered for acceptance fails to conform to contractual requirements), do not accept software that does not conform in all respects to applicable contractual requirements. Correction or replacement of nonconforming software, or an equitable reduction in contract price when correction or replacement of the nonconforming data is not practicable or is not in the Government's interests, shall be accomplished in accordance with—

(i) The provisions of a contract clause providing for inspection and acceptance of deliverables and remedies for nonconforming deliverables; or

(ii) The procedures at FAR 46.407(c) through (g), if the contract does not contain an inspection clause providing remedies for nonconforming deliverables.

(2) *Warranties*—(i) *Weapon systems*. Computer software that is a component of a weapon system or major subsystem should be warranted as part of the weapon system warranty. Follow the procedures at 246.770.

(ii) *Non-weapon systems*. Approval of the chief of the contracting office must be obtained to use a computer software warranty other than a weapon system warranty. Consider the factors at FAR 46.703 in deciding whether to obtain a computer software warranty. When approval for a warranty has been obtained, the clause at 252.246–7001, Warranty of Data, and its alternates, may be appropriately modified for use with computer software or a procurement specific clause may be developed.

227.7203–15 Subcontractor rights in computer software or computer software documentation.

(a) Subcontractors and suppliers at all tiers should be provided the same protection for their rights in computer software or computer software documentation as are provided to prime contractors.

(b) The clauses at 252.227–7019, Validation of Asserted Restrictions—Computer Software, and 252.227–7037, Validation of Restrictive Markings on

Technical Data, obtain a contractor's agreement that the Government's transaction of validation or challenge matters directly with subcontractors at any tier does not establish or imply privity of contract. When a subcontractor or supplier exercises its right to transact validation matters directly with the Government, contracting officers shall deal directly with such persons, as provided at 227.7203–13(c) for computer software and 227.7103–13(c)(3) for computer software documentation (technical data).

(c) Require prime contractors whose contracts include the following clauses to include those clauses, without modification except for appropriate identification of the parties, in contracts with subcontractors or suppliers who will be furnishing computer software in response to a Government requirement (see 227.7103–15(c) for clauses required when subcontractors or suppliers will be furnishing computer software documentation (technical data)):

(1) 252.227.7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation;

(2) 252.227.7019, Validation of Asserted Restrictions—Computer Software;

(3) 252.227.7025, Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends; and

(4) 252.227.7028, Technical Data or Computer Software Previously Delivered to the Government.

(d) Do not require contractors to have their subcontractors or suppliers at any tier relinquish rights in technical data to the contractor, a higher tier subcontractor, or to the Government, as a condition for award of any contract, subcontract, purchase order, or similar instrument except for the rights obtained by the Government under the provisions of the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause contained in the contractor's contract with the Government.

227.7203–16 Providing computer software or computer software documentation to foreign governments, foreign contractors, or international organizations.

Computer software or computer software documentation may be released or disclosed to foreign governments, foreign contractors, or international organizations only if release or disclosure is otherwise permitted both by Federal export controls and other national security laws or regulations. Subject to such laws and regulations, the Department of Defense—

(a) May release or disclose computer software or computer software documentation in which it has obtained unlimited rights to such foreign entities or authorize the use of such data by those entities; and

(b) Shall not release or disclose computer software or computer software documentation for which restrictions on use, release, or disclosure have been asserted to such foreign entities or authorize the use of such data by those entities, unless the intended recipient is subject to the same provisions as included in the use and non-disclosure agreement at 227.7103–7 and the requirements of the clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, governing use, modification, reproduction, release, performance, display, or disclosure of such data have been satisfied.

227.7203–17 Overseas contracts with foreign sources.

(a) The clause at 252.227–7032, Rights in Technical Data and Computer Software (Foreign), may be used in contracts with foreign contractors to be performed overseas, except Canadian purchases (see paragraph (c) of this subsection) in lieu of the clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, when the Government requires the unrestricted right to use, modify, reproduce, release, perform, display, or

disclose all computer software or computer software documentation to be delivered under the contract. Do not use the clause in contracts for special works.

(b) When the Government does not require unlimited rights, the clause at 252.227–7032 may be modified to accommodate the needs of a specific overseas procurement situation. The Government should obtain rights to the computer software or computer software documentation that are not less than the rights the Government would have obtained under the software rights clause(s) prescribed in this part for a comparable procurement performed within the United States or its possessions.

(c) Contracts for Canadian purchases shall include the appropriate software rights clause prescribed in this part for a comparable procurement performed within the United States or its possessions.

227.7204 Contracts under the Small Business Innovative Research Program.

When contracting under the Small Business Innovative Research Program, follow the procedures at 227–7104.

227.7205 Contracts for special works.

(a) Use the clause at 252.227–7020, Rights in Special Works, in solicitations and contracts where the Government has a specific need to control the distribution of computer software or computer software documentation first produced, created, or generated in the performance of a contract and required to be delivered under that contract, including controlling distribution by obtaining an assignment of copyright, or a specific need to obtain indemnity for liabilities that may arise out of the creation, delivery, use, modification, reproduction, release, performance, display, or disclosure of such software or documentation. Use the clause—

(1) In lieu of the clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, when the Government must own or control copyright in all computer software or computer software documentation first produced, created, or generated and required to be delivered under a contract; or

(2) In addition to the clause at 252.227–7014 when the Government must own or control copyright in some of the computer software or computer software documentation first produced, created, or generated and required to be delivered under a contract. The specific software or documentation in which the Government must own or control copyright must be identified in a special contract requirement.

(b) Although the Government obtains an assignment of copyright and unlimited rights in the computer software or computer software documentation delivered as a special work under the clause at 252.227–7020, the contractor retains use and disclosure rights in that software or documentation. If the Government needs to restrict a contractor's rights to use or disclose a special work, it must also negotiate a special license which specifically restricts the contractor's use or disclosure rights.

(c) The clause at 252.227–7020 does not permit a contractor to incorporate into a special work any work copyrighted by others unless the contractor obtains the contracting officer's permission to do so and obtains for the Government a non-exclusive, paid up, world-wide license to make and distribute copies of that work, to prepare derivative works, to perform or display any portion of that work, and to permit others to do so for government purposes. Grant permission only when the Government's requirements cannot be satisfied unless the third party work is included in the deliverable work.

(d) Examples of other works which may be procured under the clause at 252.227–7020 include, but are not limited to, audiovisual works, scripts, soundtracks, musical compositions, and adaptations; histories of departments, agencies, services or units thereof; surveys of Government establishments; instructional works or guidance to Government officers and employees on the discharge of their official duties; reports, books, studies, surveys or similar documents; collections of data containing information pertaining to individuals that, if disclosed, would violate the right of privacy or publicity of the

individuals to whom the information relates; or investigative reports.

227.7206 Contracts for architect-engineer services.

Follow 227.7107 when contracting for architect-engineer services.

227.7207 Contractor data repositories.

Follow 227.7108 when it is in the Government's interests to have a data repository include computer software or to have a separate computer software repository. Contractual instruments establishing the repository requirements must appropriately reflect the repository manager's software responsibilities.

PART 228—BONDS AND INSURANCE

Sec.

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228.370 Additional clauses.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36404, July 31, 1991, unless otherwise noted.

Subpart 228.1—Bonds

228.102 Performance and payment bonds for construction contracts.

228.102–1 General.

For Defense Environmental Restoration Program construction contracts entered into pursuant to 10 U.S.C. 2701 and executed between December 5, 1991, and December 31, 1999—

(1) Any rights of action under the performance bond shall only accrue to, and be for the exclusive use of, the obligee named in the bond.

(2) In the event of default, the surety's liability on the performance bond is limited to the cost of completion of the contract work, less the balance of unexpended funds. Under no circumstances shall the liability exceed the penal sum of the bond.

(3) The surety shall not be liable for indemnification or compensation of the obligee for loss or liability arising from personal injury or property damage, even if the injury or damage was caused by a breach of the bonded contract.

(4) Once it has taken action to meet its obligations under the bond, the surety is entitled to any indemnification and identical standard of liability to which the contractor was entitled under the contract or applicable laws and regulations.

(a) The requirement for performance and payment bonds is waived for cost-reimbursement contracts. However, for cost type contracts with fixed-price construction subcontracts over $25,000, require the prime contractor to obtain from each of its construction subcontractors—

(i) A payment bond in favor of the prime contractor sufficient to pay labor and material costs; and

(ii) A performance bond in an equal amount if available at no additional cost.

[56 FR 36404, July 31, 1991, as amended at 57 FR 42631, Sept. 15, 1992; 58 FR 28469, May 13, 1993; 60 FR 29499, June 5, 1995]

228.105 Other types of bonds.

Fidelity and forgery bonds generally are not required but may be used when—

(1) Necessary for the protection of the Government or the contractor; or

(2) The investigative and claims services of a surety company are desired.

228.106 Administration.

228.106–7 Withholding contract payments.

(a) Withholding may be appropriate in other than construction contracts (see 232.970–1(b)).

[57 FR 42707, Sept. 16, 1992]

228.170 Solicitation provision.

When a requirement for a performance bond or other security is included in a solicitation for dismantling, demolition, or removal of improvements (see FAR 37.300), use the provision at 252.228–7004, Bonds or Other Security. Set a period of time (normally ten days) for return of executed bonds.

Subpart 228.3—Insurance

228.304 Risk-pooling arrangements.

The DoD has established the National Defense Projects Rating Plan, also known as the Special Casualty Insurance Rating Plan, as a risk-pooling arrangement to minimize the cost to the Government of purchasing the liability insurance listed in FAR 28.307–2. Use the plan in accordance with the following guidelines when it provides the necessary coverage more advantageously than commercially available coverage.

(1) The plan—

(i) Is implemented by attaching an endorsement to standard insurance policy forms for workers' compensation, employer's liability, comprehensive general, and automobile liability. The endorsement states that the instant policy is subject to the National Defense Projects Rating Plan.

(ii) Applies to eligible Defense projects of one or more departments/agencies. For purposes of this section, a Defense project is any eligible contract or group of contracts with the same contractor.

(A) A Defense project is eligible when—

(*1*) Eligible contracts represent, at the inception of the plan, at least 90 percent of the payroll for the total operations at project locations; and

(*2*) The annual insurance premium is estimated to be at least $10,000.

(B) A contract is eligible when it is—

(*1*) Either domestic or foreign;

(*2*) Cost-reimbursement type; or

(*3*) Fixed price with redetermination provisions.

(2) Under construction contracts, include construction subcontractors in the prime contractor's plan only when subcontractor operations are at the project site, and the subcontract provides that the prime contractor will furnish insurance.

(3) Use the agreement in Table 28–1, Insurance Rating Plan Agreement, when the Government assumes contractor premium payments upon contract termination or completion.

(4) The Federal Tort Claims Act provides protection for Government employees while driving Government-owned vehicles in the performance of their assigned duties. Include the endorsement in Table 28–2, Automobile Insurance Policy Endorsement, in automobile liability insurance policies provided under the National Defense Projects Rating Plan.

Table 28–1.—Insurance Rating Plan Rating Agreement

Special Casualty Insurance Rating Plan Assignment-Assumption of Premium Obligations

It is agreed that 100 percent* of the return premiums and premium refunds (and dividends) due or to become due the prime contractor under the policies to which the National Defense Projects Rating Plan Endorsement made a part of policy _____ applies are hereby assigned to and shall be paid to the United States of America, and the prime contractor directs the Company to make such payments to the office designated for contract administration acting for and on account of the United States of America.

The United States of America hereby assumes and agrees to fulfill all present and future obligations of the prime contractor with respect to the payment of 100 percent of the premiums under said policies.

This agreement, upon acceptance by the prime contractor, the United States of America, and the Company shall be effective from _____

Accepted _____
(Date)

*In the event the Government has less than a 100 percent interest in premium funds or dividends, modify the assignment to reflect the percentage of interest and extent of the Government's assumption of additional premium obligation.

(Name of Insurance Company) _____
By _____
(Title of Official Signing)
Accepted _____
(Date)
United States of America
By _____
(Authorized Representative)
Accepted _____
(Date)
(Prime Contractor) _____
By _____
(Authorized Representative)

Table 28–2.—Automobile Insurance Policy Endorsement

It is agreed that insurance provided by the policy with respect to the ownership, maintenance, or use of automobiles, including loading and unloading thereof, does not apply to the following as insureds: The United States of America, any of its agencies, or any of its officers or employees.

228.305 Overseas workers' compensation and war-hazard insurance.

(d) Submit requests for waiver through department/agency channels. Include the following—

(i) Name and address of contractor;

(ii) Contract number;

(iii) Date of award;

(iv) Place of performance;

(v) Name of insurance company providing Defense Base Act coverage;

(vi) Nationality of employees to whom waiver is to apply; and

(vii) Reason for waiver.

228.307 Insurance under cost-reimbursement contracts.

228.307–1 Group insurance plans.

The Defense Department Group Term Insurance Plan is available for contractor use under cost-reimbursement type contracts when approved as provided in department or agency regulations. A contractor is eligible if—

(a) The number of covered employees is 500 or more; and

(b) The contractor has all cost-reimbursement contracts; or

(c) At least 90 percent of the payroll for contractor operations to be covered by the Plan is under cost-reimbursement contracts.

228.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

228.311–1 Contract clause.

Use the clause at FAR 52.228–7, Insurance—Liability to Third Persons, in solicitations and contracts, other than those for construction and those for architect-engineer services, when a cost-reimbursement contract is contemplated, unless the head of the contracting activity waives the requirement for use of the clause.

[56 FR 36404, July 31, 1991. Redesignated at 61 FR 50454, Sept. 26, 1996]

228.370 Additional clauses.

(a) Use the clause at 252.228–7000, Reimbursement for War-Hazard Losses, when—

(1) The clause at FAR 52.228–4, Worker's Compensation and War-Hazard Insurance Overseas, is used; and

(2) The head of the contracting activity decides not to allow the contractor to buy insurance for war-hazard losses.

(b)(1) Use the clause at 252.228–7001, Ground and Flight Risk, in negotiated fixed-price contracts for aircraft production, modification, maintenance, repair, or overhaul, unless—

(i) The aircraft is being acquired for a foreign military sale and the foreign government has not agreed to assume the risk; or

(ii) The cost of insurance for damage, loss, or destruction of aircraft does not exceed $500, and the contracting officer agrees to recognize the insurance costs.

(2) If appropriate, revise the clause at 252.228–7001, Ground and Flight Risk, as follows—

(i) Include a modified definition of ''aircraft'' if the contract covers other than conventional types of winged aircraft, i.e., helicopters, vertical take-off aircraft, lighter-than-air airships or other nonconventional aircraft. The modified definition should describe a stage of manufacture comparable to the standard definition.

(ii) Modify ''in the open'' to include ''hush houses,'' test hangars and comparable structures, and other designated areas.

(iii) Expressly define the ''contractor's premises'' where the aircraft will

be located during and for contract performance. These locations may include contract premises which are owned, leased, or premises where the contractor is a permittee or licensee or has a right to use, including Government airfields.

(iv) Revise paragraph (d)(iii) of the clause to provide Government assumption of risk for transportation by conveyance on streets or highways when transportation is—

(A) Limited to the vicinity of contractor premises; and

(B) Incidental to work performed under the contract.

(c)(1) Use the clause at 252.228–7002, Aircraft Flight Risk, in cost reimbursement contracts—

(i) For the development, production, modification, maintenance, repair, or overhaul of aircraft; or

(ii) Otherwise involving the furnishing of aircraft to the contractor by the Government.

(iii) With the definition of ''aircraft'' modified, if appropriate, to include helicopters, vertical take-off aircraft, lighter-than-air airships or other nonconventional aircraft.

(2) Use the clause at 252.228–7002, Aircraft Flight Risk, appropriately modified, in fixed price contracts when—

(i) The clause at 252.228–7001, Ground and Flight Risk, is not used; and

(ii) Contract performance involves the flight of Government furnished aircraft.

(d) The clause at 252.228–7003, Capture and Detention, may be used when contractor employees are subject to capture and detention and may not be covered by the War Hazards Compensation Act (42 U.S.C. 1701 *et seq.*).

(e) The clause at 252.228–7005, Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles, may be used in solicitations and contracts which involve the manufacture, modification, overhaul, or repair of these items.

(f) Use the clause at 252.228–7006, Compliance with Spanish Laws and Insurance, in solicitations and contracts for services or construction to be performed in Spain by other than a Spanish contractor or subcontractor.

[56 FR 36404, July 31, 1991, as amended at 57 FR 42631, Sept. 15, 1992; 62 FR 34125, June 24, 1997]

PART 229—TAXES

Subpart 229.1—General

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AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36405, July 31, 1991, unless otherwise noted.

Subpart 229.1—General

229.101 Resolving tax problems.

(a) Within DoD, the agency-designated legal counsels are the defense agency General Counsels, the General Counsels of the Navy and Air Force, and for the Army, the Chief, Contract Law Division, Office of the Judge Advocate General.

(c) The contracting officer may direct the contractor to litigate the applicability of a particular tax if—

(i) The contract is either a cost reimbursement type or a fixed price type with a tax escalation clause; and

(ii) The direction is coordinated with the agency-designated legal counsel through the DoD Tax Policy and Advisory Group.

(d)(i) Tax relief agreements between the United States and foreign governments in Europe that exempt the United States from payment of specific

taxes on purchases made for common defense purposes are maintained by the United States European Command (USEUCOM). For further information contact HQ USEUCOM, Attn: ECLA, Unit 30400, Box 1000, APO AE 09128; Telephone; DSN 430–7474, Commercial 49–0711–680–7474; Telefax: 49–0711–680–7408.

(ii) Tax relief also may be available in countries that have not signed tax relief agreements. The potential for such relief should be explored in accordance with paragraph (d)(iii) of this section.

(iii) Review DoDD 5100.64, Department of Defense Foreign Tax Relief Program, before contracting with a foreign source. Refer questions on implementation of the program to the Commanding Officers in Table 29–1, Designated Commanding Officers, which have been designated under subsection E.7 of DoDD 5100.64 to serve as—

(A) Single point of contact for U.S. contracting offices for investigation and resolution of specific foreign tax relief matters; and

(B) Liaison with responsible diplomatic mission and local foreign tax authorities.

(iv) Refer foreign tax relief questions which have not been resolved by the designated Commanding Officer to the agency-designated legal counsel.

(v) When an acquisition is for a contract to be performed in a country or area listed in Table 29–1, Designated Commanding Officers—

(A) Obtain from the designated Commanding Officer detailed information concerning the taxes and duties from which the Government of the United States is exempt, and

(B) Provide the information to prospective offerors.

(C) Do not provide prospective offerors any other information about foreign taxes or duties.

(D) Issue tax exemption certificates, as appropriate, to assist the contractor in obtaining relief from foreign taxes and duties which were excluded from the contract price.

(E) Seek advice and assistance from the designated Commanding Officer and, if necessary, the agency-designated legal counsel if the contractor notifies the contracting officer that it has been assessed a tax or duty by a foreign government which could increase the contract price.

(vi) Also see subpart 229.70 for special procedures for obtaining tax relief and duty-free import privileges when conducting U.S. Government acquisitions in certain foreign countries.

TABLE 29–1—DESIGNATED COMMANDING OFFICERS

Country or area	Designated commanding officer
Australia ..	Commander in Chief, Pacific Representative, Australia.
Azores	Commander, U.S. Forces, Azores.
Bahrain ...	Commander in Chief, U.S. Naval Forces, Europe.
Belgium ...	Commander in Chief, U.S. Army, Europe.
Bermuda	Commanding Officer, U.S. Naval Air Station, Bermuda.
Canada ...	Commander, Space Command.
Caribbean Islands (including Bahamas).	Commander, Antilles Defense Command.
Denmark	Commander in Chief, U.S. Air Forces, Europe.
Ethiopia ...	Commander in Chief, U.S. Army, Europe.
France	Commander in Chief, U.S. Army, Europe.
Germany	Commander in Chief, U.S. Army, Europe.
Greece	Commander in Chief, U.S. Air Forces, Europe.
Greenland	Commander, Space Command.
Iceland	Commander, Iceland Defense Force.
Iran	Commander in Chief, U.S. Army, Europe.
Italy	Commander in Chief, U.S. Naval Forces, Europe.
Japan	Commander, U.S. Forces, Japan.
Korea	Commander, U.S. Forces, Korea.
Luxembourg.	Commander in Chief, U.S. Army, Europe.
Morocco ..	Commander in Chief, U.S. Naval Forces, Europe.
Netherlands.	Commander in Chief, U.S. Air Forces, Europe.
New Zealand.	Commander, U.S. Naval Support Forces, Antarctica.
Norway ...	Commander in Chief, U.S. Air Forces, Europe.
Philippines.	Commander in Chief, Pacific Representative, Philippines.
Portugal ..	Commander in Chief, U.S. Naval Forces, Europe.
Spain	Commander in Chief, U.S. Air Forces, Europe.
Taiwan	Commander, U.S. Military Assistance Command, Thailand.
Turkey	Commander in Chief, U.S. Air Forces, Europe.
United Kingdom.	Commander in Chief, U.S. Air Forces, Europe.

[56 FR 36405, July 31, 1991, as amended at 62 FR 34125, June 24, 1997]

Subpart 229.4—Contract Clauses

SOURCE: 62 FR 34125, June 24, 1997, unless otherwise noted.

229.402 Foreign contracts.

229.402–1 Foreign fixed-price contracts.

Use the clause at 252.229–7000, Invoices Exclusive of Taxes or Duties, in solicitations and contracts when a fixed-price contract will be awarded to a foreign concern.

229.402–70 Additional clauses.

(a) Use the clause at 252.229–7001, Tax Relief, in solicitations and contracts when a contract will be awarded to a foreign concern in a foreign country. When contract performance will be in Germany, use the clause with its Alternate I.

(b) Use the clause at 252.229–7002, Customs Exemptions (Germany), in solicitations and contracts requiring the import of U.S. manufactured products into Germany.

(c) Use the clause at 252.229–7003, Tax Exemptions (Italy), in solicitations and contracts when contract performance will be in Italy.

(d) Use the clause at 252.229–7004, Status of Contractor as a Direct Contractor (Spain), in solicitations and contracts requiring the import into Spain of supplies for construction, development, maintenance, or operation of Spanish-American installations and facilities.

(e) Use the clause at 252.229–7005, Tax Exemptions (Spain), in solicitations and contracts when contract performance will be in Spain.

(f) Use the clause at 252.229–7006, Value Added Tax Exclusion (United Kingdom), in solicitations and contracts when contract performance will be in the United Kingdom.

(g) Use the clause at 252.229–7007, Verification of United States Receipt of Goods, in solicitations and contracts when contract performance will be in the United Kingdom.

(h) Use the clause at 252.229–7008, Relief from Import Duty (United Kingdom), in solicitations issued and contracts awarded in the United Kingdom.

(i) Use the clause at 252.229–7009, Relief from Customs Duty and Value Added Tax on Fuel (Passenger Vehicles) (United Kingdom), in solicitations issued and contracts awarded in the United Kingdom for fuels (gasoline or diesel) and lubricants used in passenger vehicles (excluding taxis).

(j) Use the clause at 252.229–7010, Relief from Customs Duty on Fuel (United Kingdom), in solicitations issued and contracts awarded in the United Kingdom that require the use of fuels (gasoline or diesel) and lubricants in taxis or vehicles other than passenger vehicles.

Subpart 229.70—Special Procedures for Overseas Contracts

SOURCE: 62 FR 34125, June 24, 1997, unless otherwise noted.

229.7000 Scope of subpart.

This subpart prescribes procedures to be used by contracting officers to obtain tax relief and duty-free import privileges when conducting U.S. Government acquisitions in certain foreign countries.

229.7001 Tax exemption in Spain.

(a) The Joint United States Military Group (JUSMG), Spain Policy Directive 400.4, or subsequent directive, applies to U.S. contracting offices acquiring supplies or services in Spain when the introduction of material or equipment into Spain is required for contract performance.

(b) Upon award of a contract with a Direct Contractor, as defined in the clause at 252.229–7004, the contracting officer will notify JUSMG–MAAG Madrid, Spain, and HQ 16AF/LGTT and forward three copies of the contract to JUSMG–MAAG, Spain.

(c) If copies of the contract are not available and duty-free import of equipment or materials is urgent, the contracting officer will send JUSMG–MAAG three copies of the Letter of Intent or a similar document indicating the pending award. In these cases, authorization for duty-free import will be issued by the Government of Spain. Upon formal award, the contracting officer will forward three copies of the completed contract to JUSMG–MAAG, Spain.

(d) The contracting officer will notify JUSMG–MAAG, Spain, and HQ 16AF/LGTT of ports-of-entry and identify the customs agents who will clear property on their behalf. Additional

documents required for port-of-entry and customs clearance can be obtained by contacting HQ 16AF/LGTT. This information will be passed to the Secretaria General Tecnica del Ministerio de Hacienda (Technical General Secretariat of the Ministry of Finance). A list of customs agents may be obtained from the 600 ABG, APO AE 90646.

229.7002 Tax exemption in the United Kingdom.

This section contains procedures to be followed in securing relief from the British value added tax and import duties.

229.7002–1 Value added tax.

(a) U.S. Government purchases qualifying for tax relief are equipment, materials, facilities, and services for the common defense effort and for foreign aid programs.

(b) To facilitate the resolution of issues concerning specific waivers of import duty or tax exemption for U.S. Government purchases (see 229.7002–3), contracting offices shall provide the name and activity address of personnel who have been granted warranted contracting authority to Her Majesty's (HM) Customs and Excise at the following address: HM Customs and Excise, International Customs Division G, Branch 4, Adelaide House, London Bridge, London EC4R 9DB.

229.7002–2 Import duty.

No import duty shall be paid by the United States and contract prices shall be exclusive of duty, except when the administrative cost compared to the low dollar value of a contract makes it impracticable to obtain relief from contract import duty. In this instance, the contracting officer shall document the contract file with a statement that—

(a) The administrative burden of securing tax relief under the contract was out of proportion to the tax relief involved;

(b) It is impracticable to secure tax relief;

(c) Tax relief is therefore not being secured; and

(d) The acquisition does not involve the expenditure of any funds to establish a permanent military installation.

229.7002–3 Value added tax or import duty problem resolution.

In the event a value added tax or import duty problem cannot be resolved at the contracting officer's level, refer the issue to HQ Third Air Force, Staff Judge Advocate, Unit 4840, Box 45, APO AE 09459. Direct contact with HM Customs and Excise in London is prohibited.

229.7002–4 Information required by HM Customs and Excise.

(a) *School bus contacts.* Provide one copy of the contract and all modifications to HM Customs and Excise.

(b) *Road fuel contracts.* For contracts that involve an application for relief from duty on the road fuel used in performance of the contract, provide—

(1) To HM Customs and Excise—

(i) Contract number;

(ii) Name and address of contractor;

(iii) Type of work (e.g., laundry, transportation);

(iv) Area of work; and

(v) Period of performance.

(2) To the regional office of HM Custom and Excise to which the contractor applied for relief from the duty on road fuel—copy of the contract.

(c) *Other contracts awarded to United Kingdom firms.* Provide information when requested by HM Customs and Excise.

PART 230—COST ACCOUNTING STANDARDS

Sec.

Subpart 230.70—Facilities Capital Employed for Facilities in Use

230.7000 Contract facilities capital estimates.
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230.7001–2 Completion instructions.
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230.7004 Administrative procedures.

230.7004–1 Forms CASB–CMF.
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Subpart 230.71—Facilities Capital Employed for Facilities Under Construction

230.7100 Definitions.
230.7101 Calculations.
230.7101–1 Cost of money.
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230.7102 Determining imputed cost of money.
230.7103 Preaward capital employed application.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36406, July 31, 1991, unless otherwise noted.

Subpart 230.70—Facilities Capital Employed for Facilities in Use

230.7000 Contract facilities capital estimates.

(a) The contracting officer will estimate the facilities capital cost of money and capital employed using—

(1) An analysis of the appropriate Forms CASB–CMF and cost of money factors; and

(2) DD Form 1861, Contract Facilities Capital Cost of Money.

230.7001 Use of DD Form 1861.

230.7001–1 Purpose.

The DD Form 1861 provides a means of linking the Form CASB–CMF and DD Form 1547, Record of Weighted Guidelines Application. It—

(a) Enables the contracting officer to differentiate profit objectives for various types of assets (land, buildings, equipment). The procedure is similar to applying overhead rates to appropriate overhead allocation bases to determine contract overhead costs.

(b) Is designed to record and compute the contract facilities capital cost of money and capital employed which is carried forward to DD Form 1547.

230.7001–2 Completion instructions.

Complete a DD Form 1861 only after evaluating the contractor's cost proposal, establishing cost of money factors, and establishing a prenegotiation objective on cost. Complete the form as follows:

(a) List overhead pools and direct-charging service centers (if used) in the same structure as they appear on the contractor's cost proposal and Form CASB–CMF. The structure and allocation base units-of-measure must be compatible on all three displays.

(b) Extract appropriate contract overhead allocation base data, by year, from the evaluated cost breakdown or prenegotiation cost objective and list against each overhead pool and direct-charging service center.

(c) Multiply each allocation base by its corresponding cost of money factor to get the facilities capital cost of money estimated to be incurred each year. The sum of these products represents the estimated contract facilities capital cost of money for the year's effort.

(d) Total contract facilities cost of money is the sum of the yearly amounts.

(e) Since the facilities capital cost of money factors reflect the applicable cost of money rate in Column 1 of Form CASB–CMF, divide the contract cost of money by that same rate to determine the contract facilities capital employed.

230.7002 Preaward facilities capital applications.

To establish cost and price objectives, apply the facilities capital cost of money and capital employed, as determined under 230.7000, as follows:

(a) *Cost of Money*—(1) *Cost Objective.* Use the imputed facilities capital cost of money, with normal, booked costs, to establish a cost objective or the target cost when structuring an incentive type contract. Do not adjust target costs established at the outset even though actual cost of money rates become available during the period of contract performance.

(2) *Profit Objective.* When measuring the contractor's effort for the purpose of establishing a prenegotiation profit objective, restrict the cost base to normal, booked costs. Do not include cost of money as part of the cost base.

(b) *Facilities Capital Employed.* Assess and weight the profit objective or risk associated with facilities capital employed in accordance with the profit guidelines at 215.970–1(c).

230.7003 Postaward facilities capital applications.

230.7003–1 Interim billings based on costs incurred.

(a) The contractor may include contract facilities capital cost of money in cost reimbursement and progress payment invoices. To determine the amount that qualifies as cost incurred, multiply the incurred portions of the overhead pool allocation bases by the latest available cost of money factors. These cost of money calculations are interim estimates subject to adjustment.

(b) As actual cost of money factors under CAS 414 and FAR 31.205–10 are finalized, use the new factors to calculate contract facilities cost of money for the next accounting period.

230.7003–2 Final settlement.

(a) Contract facilities capital cost of money for final cost determination or repricing is based on each year's final cost of money factors determined under CAS 414 and supported by separate Forms CASB–CMF.

(b) Separately compute contract facilities cost of money in a manner similar to yearly final overhead rates. Also like overhead costs, include in the final settlement an adjustment from interim to final contract cost of money. Do not, however, adjust estimated or target cost.

230.7004 Administrative procedures.

230.7004–1 Forms CASB–CMF

(a) Forms CASB–CMF are normally initiated by the contractor under the same circumstances as Forward Pricing Rate Agreements (see FAR 15.809) and evaluated as complementary documents and procedures.

(b) Separate forms are required for each prospective cost accounting period of contract performance.

(c) The contractor may submit annually or with individual contract price proposals, as agreed with the administrative contracting officer (ACO).

(d) The contractor must submit a final form under CAS 414 as soon as possible after the end of each accounting period, together with a proposal for actual overhead costs and rates.

230.7004–2 DD Form 1861.

(a) The contracting officer may ask the ACO to complete the forms as part of field pricing support.

(b) When the Weighted Guidelines Method is used, completion of the DD Form 1861 requires information not included on the Form CASB–CMF, i.e., distribution percentages of land, building, and equipment for the business unit performing the contract. Choose the most practical method for obtaining this information, for example—

(1) Contract administration offices could obtain the information through the process used to establish factors for facilities capital cost of money or could establish advance agreements on distribution percentages for inclusion in field pricing reports;

(2) The corporate ACO could obtain distribution percentages; or

(3) The contracting officer could request the information through a solicitation provision.

Subpart 230.71—Facilities Capital Employed for Facilities Under Construction

230.7100 Definitions.

(a) *Intangible capital asset* is an asset that has no physical substance, has more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the benefit it yields.

(b) *Tangible capital asset* is an asset that has physical substance, more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the service it yields.

(c) *Cost of money rate* is either—

(1) The interest rate determined by the Secretary of the Treasury under Public Law 92–41 (85 Stat. 97); or

(2) The time-weighted average of the interest rate for each cost accounting period during which the asset is being constructed, fabricated, or developed.

(d) *Representative investment* is the calculated amount considered invested by the contractor during the cost accounting period to construct, fabricate, or develop the asset.

230.7101 Calculations.

230.7101–1 Cost of money.

(a) The interest rate in 230.7100(c)(1) is established semi-annually and is published in the FEDERAL REGISTER during the fourth week of December and June.

(b) To calculate the time-weighted average interest rate—

(1) Multiply the various rates in effect during the months of construction by the number of months each rate was in effect; and

(2) Divide the sum of the products by the total number of months in which the rates were experienced.

230.7101–2 Representative investment.

(a) The calculation of the representative investment requires consideration of the rate or expenditure pattern of the costs to construct, fabricate, or develop a capital asset.

(b) If a majority of the costs were incurred toward the beginning, middle, or end of the cost accounting period, the contractor shall either—

(1) Determine a representative investment amount for the cost accounting period by calculating the average of the month-end balances for that cost accounting period; or

(2) Treat month-end balances as individual representative investment amounts.

(c) If the costs were incurred in a fairly uniform expenditure pattern throughout the construction, fabrication, or development period, the contractor may—

(1) Determine a representative investment amount for the cost accounting period by averaging the beginning and ending balances of the construction, fabrication, or development cost account for the cost accounting period; or

(2) Treat month-end balances as individual representative investment amounts.

230.7102 Determining imputed cost of money.

(a) Determine the imputed cost of money for an asset under construction, fabrication, or development by applying a cost of money rate (see 230.7101–1) to the representative investment amount (see 230.7101–2).

(1) When a representative investment amount is determined for a cost accounting period in accordance with 230.7101–2(b)(1) or 230.7101–2(c)(1), the cost of money will be the time-weighted average rate.

(2) When a monthly representative investment amount is used in accordance with 230.7101–2(b)(2) or 230.7101–2(c)(2), the cost of money will be the interest rate in effect each month. (Under this method, the cost of money is determined monthly and the total for the cost accounting period is the sum of the monthly amounts.)

(b) The imputed cost of money will be capitalized only once in any cost accounting period, either at the end of the period or at the end of the construction, fabrication, or development period, whichever comes first.

(c) When the construction of an asset takes more than one cost accounting period, the cost of money capitalized for the first cost accounting period will be included in determining the representative investment amount for any future cost accounting periods.

230.7103 Preaward capital employed application.

An offset to the profit objectives as set forth in FAR Subpart 15.9 is not required for CAS 417 cost of money.

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

Sec.

Subpart 231.1—Applicability

231.100 Scope of subpart.
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231.205 Selected costs.
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Subpart 231.3—Contracts With Educational Institutions

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231.603 Requirements.

Subpart 231.7—Contracts With Nonprofit Organizations

231.703 Requirements.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36408, July 31, 1991, unless otherwise noted.

Subpart 231.1—Applicability

231.100 Scope of subpart.

§ 231.100–70 Contract clause.

Use the clause at 252.231–7000, Supplemental Cost Principles, in all solicitations and contracts which are subject to the principles and procedures described in FAR subpart 31.1, 31.2, 31.6, or 31.7.

[59 FR 27672, May 27, 1994]

Subpart 231.2—Contracts With Commercial Organizations

231.205 Selected costs.

231.205–6 Compensation for personal services.

(a)(2)(i)(A) Costs for individual compensation in excess of $250,000 per year are unallowable under DOD contracts that are awarded after April 15, 1995, and are funded by fiscal year 1995 appropriations (Section 8117 of Pub. L. 103–335).

(B) Costs for individual compensation in excess of $200,000 per year are unallowable under DOD contracts that are awarded after July 1, 1996, and are funded by fiscal year 1996 appropriations (Section 8086 of Pub. L. 104–61).

(ii) Costs for individual compensation in excess of $250,000 per year are unallowable under new DoD contracts funded by fiscal year 1997 appropriations (Section 8071 of Public Law 104–208). For purposes of this limitation, the term ''compensation'' means—

(A) The total amount of taxable wages paid to the employee for the year concerned; plus

(B) The total amount of elective deferred compensation earned by the employee in the year concerned.

(f)(1) Costs for bonuses or other payments in excess of the normal salary paid by the contractor to an employee, that are part of restructuring costs associated with a business combination, are unallowable under DoD contracts funded by fiscal year 1996 appropriations (Section 8122 of Pub. L. 104–61) or fiscal year 1997 appropriations (Section 8095 of Pub. L. 104–208). This limitation does not apply to severance payments or early retirement incentive payments. (See 231.205–70(b) for the definitions of ''business combination'' and ''restructuring costs.'')

[57 FR 53600, Nov. 12, 1992, as amended at 58 FR 28469, May 13, 1993; 60 FR 2331, Jan. 9, 1995; 60 FR 61598, Nov. 30, 1995; 61 FR 7077, Feb. 26, 1996; 61 FR 36306, July 10, 1996; 61 FR 50454, Sept. 26, 1996; 61 FR 58490, Nov. 15, 1996; 61 FR 65479, Dec. 13, 1996]

231.205–10 Cost of money.

The contractor also must comply with subpart 230.70 and maintain records to demonstrate compliance.

231.205–18 Independent research and development and bid and proposal costs.

(c)(1)(i)(C)(*1*) Total incurred IR&D/B&P costs, including total IR&D/B&P ceiling amounts which are negotiated pursuant to FAR 31.205–18(c)(1), are fully allocable to all final cost objectives of the contractor. The amount of IR&D/B&P costs allowable under contracts which are subject to advance agreements negotiated by DoD shall not exceed the lesser of—

(*i*) Such contracts' allocable share of incurred IR&D/B&P costs;

(*ii*) Such contracts' allocable share of the total IR&D/B&P ceiling; or

(*iii*) The amount of incurred IR&D/B&P costs for projects having potential interest to DoD.

(*2*) Allowable IR&D/B&P costs are limited to those for projects which are of potential interest to DoD, including activities that—

(*i*) Strengthen the defense industrial and technology base of the United States;

(*ii*) Enhance the industrial competitiveness of the United States;

(*iii*) Promote the development of technologies identified as critical in the plan required under 10 U.S.C. 2508;

(*iv*) Increase the development of technologies useful for both the private commercial sector and the public sector; or

(*v*) Develop efficient and effective technologies for achieving such environmental benefits as improved environmental data gathering, environmental cleanup and restoration, pollution-reduction in manufacturing, environmental conservation, and environmentally safe management of facilities.

(*3*) The contracting officer will—

(*i*) Determine whether IR&D/B&P projects are of potential interest to DoD; and

(*ii*) Provide the results of the determination to the contractor.

(*4*) See 225.7303 for additional allowability provisions affecting foreign military sale contracts.

(2) Departments/agencies shall not supplement this regulation in any way that limits IR&D/B&P cost allowability. See 225.7303–2 for allowability exceptions for foreign military sales contracts.

(i) In addition to the limitations in FAR 31.205–18(c)(2)(i), for major contractors—

(*1*) The amount of IR&D/B&P costs allowability under DoD contracts shall not exceed the lesser of—

(*i*) Such contracts' allocable share of incurred IR&D/B&P costs;

(*ii*) Such contracts' allocable share of the contractor's total maximum allowable amount; or

(*iii*) The amount of incurred IR&D/B&P costs for projects having potential interest to DoD.

(*2*) Allowable IR&D/B&P costs are limited to those for projects which are of potential interest to the DoD, including activities intended to accomplish any of the following—

(*i*) Enable superior performance of future U.S. weapon systems and components;

(*ii*) Reduce acquisition costs and life-cycle costs of military systems;

(*iii*) Strengthen the defense industrial and technology base of the United States;

(*iv*) Enhance the industrial competitiveness of the United States;

(*v*) Promote the development of technologies identified as critical under 10 U.S.C. 2522;

(*vi*) Increase the development and promotion of efficient and effective applications of dual-use technologies;

(*vii*) Provide efficient and effective technologies for achieving such environmental benefits as: improved environmental data gathering, environmental cleanup and restoration, pollution reduction in manufacturing, environmental conservation, and environmentally safe management of facilities.

(ii) The cognizant contract administration office shall furnish contractors with guidance on financial information needed to support IR&D/B&P costs and on technical information needed from major contractors to support the potential interest to DoD determination (see also 242.771–3(a)).

(iii) The total maximum allowable amount limitation may be waived at a level above the contracting officer. A waiver may be appropriate for contractors whose significant growth in sales or IR&D/B&P spending justify higher levels of reimbursement.

[56 FR 67217, Dec. 30, 1991, as amended at 57 FR 53600, Nov. 12, 1992; 59 FR 27672, May 27, 1994]

231.205–22 Legislative lobbying costs.

(a) Preparing any material, report, list, or analysis on the actual or projected economic or employment impact in a particular State or congressional district of an acquisition program for which all research, development, testing, and evaluation has not been completed (10 U.S.C. 2249).

[62 FR 47155, Sept. 8, 1997]

231.205–70 External restructuring costs.

(a) *Scope.* This subsection prescribes policies and procedures for allowing contractor external restructuring costs when net savings would result for DoD.

This subsection also implements Section 818 of the National Defense Authorization Act for Fiscal Year 1995 (Pub. L. 103–337) and Section 8115 of the National Defense Appropriations Act for Fiscal Year 1997 (Pub. L. 104–208).

(b) *Definitions.* As used in this subsection:

(1) *Business combination* means a transaction whereby assets or operations of two or more companies not previously under common ownership or control are combined, whether by merger, acquisition, or sale/purchase of assets.

(2) *External restructuring activities* means restructuring activities occurring after a business combination that affect the operations of companies not previously under common ownership or control. They do not include restructuring activities occurring after a business combination that affect the operations of only one of the companies not previously under common ownership or control, or, when there has been no business combination, restructuring activities undertaken within one company. External restructuring activities are a direct outgrowth of a business combination. They normally will be initiated within 3 years of the business combination.

(3) *Restructuring activities* means nonroutine, nonrecurring, or extraordinary activities to combine facilities, operations, or workforce, in order to eliminate redundant capabilities, improve future operations, and reduce overall costs. Restructuring activities do not include routine or ongoing repositionings and redeployments of a contractor's productive facilities or workforce (e.g., normal plant rearrangement or employee relocation), nor do they include other routine or ordinary activities charged as indirect costs that would otherwise have been incurred (e.g., planning and analysis, contract administration and oversight, or recurring financial and administrative support).

(4) *Restructuring costs* means the costs, including both direct and indirect, of restructuring activities. Restructuring costs that may be allowed include, but are not limited to, severance pay for employees, early retirement incentive payments for employees, employee retraining costs, relocation expense for retained employees, and relocation and rearrangement of plant and equipment. For purposes of this definition, if restructuring costs associated with external restructuring activities allocated to DoD contracts are less than $2.5 million, the costs shall not be subject to the audit, review, and certification requirements of 231.205–70(c)(1); instead, the normal rules for determining cost allowability in accordance with FAR Part 31 shall apply.

(5) *Restructuring savings* means cost reductions, including both direct and indirect cost reductions, that result from restructuring activities. Reassignments of cost to future periods are not restructuring savings.

(c) *Limitations on cost allowability.* (1) Restructuring costs associated with external restructuring activities shall not be allowed unless—

(i) Such costs are allowable in accordance with FAR Part 31 and DFARS Part 231;

(ii) An audit of projected restructuring costs and restructuring savings is performed;

(iii) The cognizant administrative contracting officer (ACO) reviews the audit report and the projected costs and projected savings, determines that overall reduced costs should result for DoD, and negotiates an advance agreement in accordance with 231.205–70(d)(8); and

(iv) A certification is made by the Under Secretary of Defense (Acquisition & Technology), his Principal Deputy or designee (in all cases, an individual appointed by the President and confirmed by the Senate), that projections of future restructuring savings resulting for DoD from the business combination are based on audited cost data and should result in overall reduced costs for DoD.

(2) The audit, review, and certification required by 231.205–70(c)(1) shall not apply to any business combination for which payments for restructuring costs were made before August 15, 1994, or for which the cognizant ACO executed an advance agreement establishing cost ceilings based on audit/negotiation of detailed cost proposals for

individual restructuring projects before August 15, 1994.

(3) Additionally, for business combinations that occur after September 30, 1996, no fiscal year 1997 appropriated funds may be obligated or expended to reimburse a contractor for restructuring costs associated with external restructuring activities unless—

(i) The audited savings for DoD resulting from the restructuring will exceed the costs allowed by a factor of at least two to one; or

(ii) The savings for DoD resulting from the restructuring will exceed the costs allowed, and the Secretary of Defense determines that the business combination will result in the preservation of a critical capability that might otherwise be lost to DoD.

(d) *Procedures and ACO responsibilities.* As soon as it is known that the contractor will incur restructuring costs for external restructuring activities, the cognizant ACO shall:

(1) Promptly execute a novation agreement, if one is required, in accordance with FAR subpart 42.12 and DFARS subpart 242.12 and include the provision at DFARS 242.1204(e).

(2) Direct the contractor to segregate restructuring costs and to suspend these amounts from any billings, final contract price settlements, and overhead settlements until the certification in 231.205–70(c)(1)(iv) is obtained.

(3) Require the contractor to submit an overall plan of restructuring activities and an adequately supported proposal for planned restructuring projects. The proposal must include a breakout by year by cost element, showing the projected restructuring costs and projected restructuring savings.

(4) Notify major buying activities of contractor restructuring actions and inform them about any potential monetary impacts on major weapons programs, when known.

(5) Upon receipt of the contractor's proposal, as soon as practicable, adjust forward pricing rates to reflect the impact of projected restructuring savings. If restructuring costs are included in forward pricing rates prior to execution of an advance agreement in accordance with 231.205–70(d)(8), the contracting officer shall include a repricing clause in each fixed-price action that is priced based on the rates. The repricing clause must provide for a downward price adjustment to remove restructuring costs if the certification required by 231.205–70(c)(1)(iv) is not obtained.

(6) Upon receipt of the contractor's proposal, immediately request an audit review of the contractor's proposal.

(7) Upon receipt of the audit report, determine if restructuring savings will exceed restructuring costs on a present value basis.

(8) Negotiate an advance agreement with the contractor setting forth, at a minimum, a cumulative cost ceiling for restructuring projects and, when necessary, a cost amortization schedule. The cost may not exceed the amount of projected restructuring savings on a present value basis. The advance agreement shall not be executed until the certification required by 231.205–70(c)(1)(iv) is obtained.

(9) Submit to the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition & Technology), ATTN: OUSD(A&T)DP/CPF, a recommendation for certification of net benefit. Include the information described in 231.205–70(e).

(10) Consult with the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition & Technology), when 231.205–70(c)(3)(ii) applies.

(e) *Information needed to obtain certification of net benefit.* (1) The novation agreement (if one is required).

(2) The contractor's restructuring proposal.

(3) The proposed advance agreement.

(4) The audit report.

(5) Any other pertinent information.

(6) The cognizant ACO's recommendation for certification. This recommendation must clearly indicate that contractor projections of future cost savings resulting for DoD from the business combination are based on audited cost data and should result in overall reduced costs for the Department.

[61 FR 16881, Apr. 18, 1996; 61 FR 49531, Sept. 20, 1996, as amended at 61 FR 50454, Sept. 26, 1996; 61 FR 64635, Dec. 6, 1996; 62 FR 49304, Sept. 19, 1997]

231.205–71 Defense capability preservation agreements.

(a) *Scope and authority.* Where it would facilitate the achievement of the policy objectives relating to defense reinvestment, diversification, and conversion set forth in 10 U.S.C. 2501(b), DoD may enter into a ''defense capability preservation agreement'' with a contractor. As authorized by Section 808 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106), such an agreement would permit the contractor to claim certain indirect costs attributable to its private sector work as allowable costs on its defense contracts.

(b) *Procedure.* A contractor may submit a request for such an agreement, together with appropriate justification, through the Deputy Under Secretary of Defense for Industrial Affairs and Installations, to the Under Secretary of Defense for Acquisition and Technology, who has exclusive approval or disapproval authority. The contractor should also provide an informational copy of any such request to the cognizant administrative contracting officer.

[61 FR 21975, May 13, 1996, as amended at 61 FR 50454, Sept. 26, 1996]

Subpart 231.3—Contracts With Educational Institutions

231.303 Requirements.

(1) Pursuant to section 841 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103–160), no limitation may be placed on the reimbursement of otherwise allowable indirect costs incurred by an institution of higher education under a DoD contract awarded on or after November 30, 1993, unless that same limitation is applied uniformly to all other organizations performing similar work under DoD contracts. The 26 percent limitation imposed on administrative indirect costs by OMB Circular No. A–21 shall not be applied to DoD contracts awarded on or after November 30, 1993, to institutions of higher education because the same limitation is not applied to other organizations performing similar work.

(2) The cognizant administrative contracting officer may waive the prohibition in 231.303(1) if the governing body of the institution of higher education requests the waiver to simplify the institution's overall management of DoD cost reimbursements under DoD contracts.

(3) The limitations on allowable individual compensation at 231.205–6(a)(2)(i) and (ii) also apply to this subpart.

(4) Under 10 U.S.C. 2249, the costs cited in 231.205–22(a) are unallowable.

[59 FR 26144, May 19, 1994, as amended at 60 FR 2331, Jan. 9, 1995; 61 FR 36306, July 10, 1996; 62 FR 47155, Sept. 8, 1997]

Subpart 231.6—Contracts With State, Local, and Federally Recognized Indian Tribal Governments

231.603 Requirements.

(1) The limitations on allowable individual compensation at 231.205–6(a)(2)(i) and (ii) also apply to this subpart.

(2) Under 10 U.S.C. 2249, the costs cited in 231.205–22(a) are unallowable.

[61 FR 36306, July 10, 1996, as amended at 62 FR 47155, Sept. 8, 1997]

Subpart 231.7—Contracts With Nonprofit Organizations

231.703 Requirements.

(1) The limitations on allowable individual compensation at 231.205–6(a)(2)(i) and (ii) also apply to this subpart.

(2) Under 10 U.S.C. 2249, the costs cited in 231.205–22(a) are unallowable.

[61 FR 36306, July 10, 1996, as amended at 62 FR 47155, Sept. 8, 1997]

PART 232—CONTRACT FINANCING

Sec.

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AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36409, July 31, 1991, unless otherwise noted.

Subpart 232.1—General

232.102 Description of contract financing methods.

(e)(2) Progress payments based on percentage or stage of completion are authorized only for contracts for construction (as defined in FAR 36.102), shipbuilding, and ship conversion, alteration, or repair.

232.102–70 Provisional delivery payments.

(a) The contracting officer may establish provisional delivery payments to pay contractors for the costs of supplies and services delivered to and accepted by the Government under the following contract actions, if undefinitized—

(1) Letter contracts contemplating a fixed-price contract;

(2) Orders under basic ordering agreements;

(3) Spares provisioning documents annexed to contracts;

(4) Unpriced equitable adjustments on fixed-price contracts; and

(5) Orders under indefinite delivery contracts.

(b) Provisional delivery payments shall be—

(1) Used sparingly;

(2) Priced conservatively; and

(3) Reduced by liquidating previous progress payments in accordance with the Progress Payments clause.

(c) Provisional delivery payments shall not—

(1) Include profit;

(2) Exceed funds obligated for the undefinitized contract action; or

(3) Influence the definitized contract price.

232.108 Financial consultation.

(1) Department/agency contract financing offices are—

(i) Army—Office, Assistant Secretary of the Army (Financial Management);

(ii) Navy—Executive Comptroller for Banking, Cash Management, Contract Financing and Compensation Systems, Assistant Comptroller of the Navy for Financial Management;

(iii) Air Force—Chief of Banking and Contract Financing, Directorate of Accounting, Air Force Accounting and Finance Center;

(iv) Defense agencies—Office of the agency comptroller.

(2) The Under or Assistant Secretary, or other designated official, responsible for the comptroller function within the department or agency is the focal point for financing matters at the departmental/agency headquarters. Departments/agencies may establish contract financing offices at operational levels.

(3) Contract financing offices should participate in—

(i) Developing regulations for contract financing;

(ii) Developing contract provisions for contract financing; and

(iii) Resolving specific cases which involve unusual contract financing requirements.

[56 FR 36409, July 31, 1991, as amended at 60 FR 29499, June 5, 1995]

232.111 Contract clauses.

232.111–70 Additional clause.

Use the clause at 252.232–7006, Reduction or Suspension of Contract Payments Upon Finding of Fraud, in all solicitations and contracts.

[57 FR 3358, Jan. 29, 1992]

232.170 Responsibilities.

(a) The Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition & Technology), USD(A&T)DP, is responsible for ensuring uniform administration of DoD contract financing, including DoD contract financing policies and important related procedures.

(b) The departments and agencies are responsible for their day-to-day contract financing operations. Refer specific cases involving financing policy or important procedural issues to USD(A&T)DP for consideration (see also 201.24 for deviation request and approval procedures).

[56 FR 36409, July 31, 1991, as amended at 60 FR 61598, Nov. 30, 1995]

232.171 Contract Finance Committee.

(a) The Contract Finance Committee consists of—

(1) A representative of the USD(A&T)DP, serving as chairman;

(2) A representative of the Comptroller of the Department of Defense; and

(3) Two representatives of each military department and the Defense Logistics Agency (one representing contracting and one representing the contract finance office).

(b) The Committee—

(1) Advises and assists the USD(A&T)DP in ensuring proper and uniform application of policies, procedures, and forms;

(2) Is responsible for formulating, revising, and promulgating uniform contract financing regulations;

(3) May recommend to the Secretary of Defense through the USD(A&T)DP further policy directives on financing; and

(4) Meets at the request of the Chair or a member.

[56 FR 36409, July 31, 1991, as amended at 60 FR 61598, Nov. 30, 1995]

232.172 Financial responsibility of contractors.

Use the policies and procedures in this section in determining the financial capability of current or prospective contractors.

232.172–1 Required financial reviews.

The contracting officer shall perform a financial review when the contracting officer does not otherwise have sufficient information to make a positive determination of financial responsibility. In addition, the contracting officer shall consider performing a financial review—

(a) Prior to award of a contract, when—

(1) The contractor is on a list requiring preaward clearance or other special clearance before award;

(2) The contractor is listed on the Consolidated List of Contractors Indebted to the Government (Hold-Up List), or is otherwise known to be indebted to the Government;

(3) The contractor may receive Government assets such as contract financing payments or Government property;

(4) The contractor is experiencing performance difficulties on other work; or

(5) The contractor is a new company or a new supplier of the item.

(b) At periodic intervals after award of a contract, when—

(1) Any of the conditions of paragraphs (a) (2) through (5) of this subsection are applicable; or

(2) There is any other reason to question the contractor's ability to finance performance and completion of the contract.

232.172–2 Appropriate information.

(a) The contracting officer shall obtain whatever type and depth of financial and other information is required to establish a contractor's financial capability or disclose a contractor's financial condition. While the contracting officer should not request information that is not necessary for the protection of the Government's interests, the contracting officer must insist upon obtaining that information which is necessary. The unwillingness or inability of a contractor to present reasonably requested information in a timely manner, especially information that a prudent business person would be expected to have and use in the professional management of a business, may be a material fact in the determination of the contractor's responsibility and prospects for contract completion.

(b) Obtain the following information to the extent required to protect the Government's interest. In addition, if the contracting officer concludes that information not listed below is required to comply with 232.172–1, that information should be requested. The information must be for the person(s) who are legally liable for contract performance. If the contractor is not a corporation, obtain the required information for each individual/joint venturer/partner—

(1) Balance sheet and income statement—

(i) For the current fiscal year (interim);

(ii) For the most recent fiscal year and preferably, for the two preceding fiscal years. These should be certified by an independent public accountant or by an appropriate officer of the firm; and

(iii) Forecasted for each fiscal year for the remainder of the period of contract performance;

(2) Summary history of the contractor and its principal managers, disclosing any previous insolvencies—corporate or personal, and describing its products or services;

(3) Statement of all affiliations disclosing—

(i) Material financial interests of the contractor;

(ii) Material financial interests in the contractor;

(iii) Material affiliations of owners, officers, directors, major stockholders; and

(iv) The major stockholders if the contractor is not a widely-traded, publicly-held corporation;

(4) Statement of all forms of compensation to each officer, manager, partner, joint venturer, or proprietor, as appropriate—

(i) Planned for the current year;

(ii) Paid during the past 2 years; and

(iii) Deferred to future periods.

(5) Business base and forecast which—

(i) Shows, by significant markets, existing contracts and outstanding offers, including those under negotiation; and

(ii) Is reconcilable to indirect cost rate projections.

(6) Cash forecast for the duration of the contract (see 232.172–3).

(7) Financing arrangement information which discloses—

(i) Availability of cash to finance contract performance;

(ii) Contractor's exposure to financial crisis from creditor's demands;

(iii) Degree to which credit security provisions could conflict with Government title terms under contract financing;

(iv) Clearly stated confirmations of credit with no unacceptable qualifications; and

(v) Unambiguous written agreement by a creditor if credit arrangements include deferred trade payments or creditor subordinations/repayment suspensions.

(8) Statement of all state, local, and Federal tax accounts, including special mandatory contributions, e.g., environmental superfund.

(9) Description and explanation of the financial effect of issues such as—

(i) Leases, deferred purchase arrangements, patent or royalty arrangements;

(ii) Insurance, when relevant to the contract;

(iii) Contemplated capital expenditures, changes in equity, or contractor debt load;

(iv) Pending claims either by or against the contractor;

(v) Contingent liabilities such as guarantees, litigation, environmental, or product liabilities;

(vi) Validity of accounts receivable and actual value of inventory, as assets; and

(vii) Status and aging of accounts payable.

(10) Significant ratios such as—

(i) Inventory to annual sales;

(ii) Inventory to current assets;

(iii) Liquid assets to current assets;

(iv) Liquid assets to current liabilities;

(v) Current assets to current liabilities; and

(vi) Net worth to net debt.

232.172–3 Cash flow forecasts.

(a) A contractor must be able to sustain a sufficient cash flow to perform the contract. Whenever there is a doubt about the sufficiency of a contractor's cash flow, the contracting officer should require the contractor to submit a cash flow forecast covering the duration of the contract.

(b) A contractor's inability or refusal to prepare and provide cash flow forecasts or to reconcile actual cash flow with previous forecasts is a strong indicator of serious managerial deficiencies or potential contract cost or performance problems.

(c) Single or one-time cash flow forecasts are of limited forecasting power. As such, they should be limited to preaward survey situations. Reliability of cash flow forecasts can be established only by comparing a series of previous actual cash flows with the corresponding forecasts and examining the causes of any differences.

(d) Cash flow forecasts must—

(1) Show the origin and use of all material amounts of cash within the entire business unit responsible for contract performance, period by period, for the length of the contract (or until the risk of a cash crisis ends); and

(2) Provide an audit trail to the data and assumptions used to prepare it.

(e) Cash flow forecasts can be no more reliable than the assumptions on which they are based. Most important of these assumptions are—

(1) Estimated amounts and timing of purchases and payments for materials, parts, components, subassemblies, and services;

(2) Estimated amounts and timing of payments for purchase or production of capital assets, test facilities, and tooling;

(3) Amounts and timing of fixed cash charges such as debt installments, interest, rentals, taxes, and indirect costs;

(4) Estimated amounts and timing of payments for projected labor, both direct and indirect;

(5) Reasonableness of projected manufacturing and production schedules;

(6) Estimated amounts and timing of billings to customers (including progress payments), and customer payments;

(7) Estimated amounts and timing of cash receipts from lenders or other credit sources, and liquidation of loans; and

(8) Estimated amounts and timing of cash receipts from other sources.

(f) The contracting officer should review the assumptions underlying the cash flow forecasts. In determining whether the assumptions are reasonable and realistic, the contracting officer should consult with—

(1) The contractor;

(2) Government personnel in the areas of finance, engineering, production, cost, and price analysis; or

(3) Prospective supply, subcontract, and loan or credit sources.

232.173 Reduction or suspension of contract payments upon finding of fraud.

232.173–1 General.

(a) 10 U.S.C. 2307(e)(2) provides for a reduction or suspension of further payments to a contractor when the agency head determines there is substantial evidence that the contractor's request for advance, partial, or progress payments is based on fraud.

(b) The agency head may not delegate his or her responsibilities under 10 U.S.C. 2307(e) below level IV of the Executive Schedule. For purposes of this section, the Under Secretary of Defense (Acquisition & Technology) is the agency head for the defense agencies.

(c) Authority to reduce or suspend payments under 10 U.S.C. 2307(e) is in addition to other Government rights, remedies, and procedures.

(d) In accordance with 10 U.S.C. 2310(a), agency head determinations and decisions under this section may be made for an individual contract or any group of contracts affected by the fraud.

[57 FR 3359, Jan. 29, 1992, as amended at 57 FR 42632, Sept. 15, 1992; 60 FR 61598, Nov. 30, 1995]

232.173–2 Definitions.

As used in this section—

(a) *Remedy coordination official* means the person or entity in the agency who coordinates within that agency the administration of criminal, civil, administrative, and contractual remedies resulting from investigations of fraud or corruption related to procurement activities.

(b) *Substantial evidence* means information sufficient to support the reasonable belief that a particular act or omission has occurred.

[57 FR 3359, Jan. 29, 1992]

232.173–3 Responsibilities.

(a) Agencies shall establish appropriate procedures to implement the policies and procedures of this section.

(b) Government personnel shall report suspected fraud related to advance, partial, or progress payments in accordance with agency regulations.

[57 FR 3359, Jan. 29, 1992]

232.173–4 Procedures.

(a) In any case in which an agency's remedy coordination official finds substantial evidence that a contractor's request for advance, partial, or progress payments under a contract awarded by that agency is based on fraud, the remedy coordination official shall recommend that the agency head reduce or suspend further payments to the contractor. The remedy coordination official shall submit to the agency head a written report setting forth the remedy coordination official's findings that support each recommendation.

(b) Upon receiving a recommendation from the remedy coordination official under paragraph (a) of this subsection, the agency head shall determine whether substantial evidence exists that the request for payment under a contract is based on fraud.

(c) If the agency head determines that substantial evidence exists, the agency head may reduce or suspend further payments to the contractor under the affected contract(s). Such reduction or suspension shall be reasonably commensurate with the anticipated loss to the Government resulting from the fraud.

(d) In determining whether to reduce or suspend further payment(s), as a minimum, the agency head shall consider:

(1) A recommendation from investigating officers that disclosure of the allegations of fraud to the contractor may compromise an ongoing investigation;

(2) The anticipated loss to the Government as a result of the fraud;

(3) The contractor's overall financial condition and ability to continue performance if payments are reduced or suspended;

(4) The contractor's essentiality to the national defense;

(5) Assessment of all documentation concerning the alleged fraud, including documentation submitted by the contractor in its response to the notice required by paragraph (e) of this subsection.

(e) Before making a decision to reduce or suspend further payments, the agency head shall, in accordance with agency procedures—

(1) Notify the contractor in writing of the action proposed by the remedy coordination official and the reasons therefore; and

(2) Provide the contractor an opportunity to submit information within a reasonable time, in response to the action proposed by the remedy coordination official.

(f) When more than one agency has contracts affected by the fraud, the agencies shall consider designating one agency as the lead agency for making the determination and decision.

(g) The agency shall retain in its files the written justification for each—

(1) Decision of the agency head whether to reduce or suspend further payments; and

(2) Recommendation received by an agency head in connection with such decision.

(h) Not later than 180 calendar days after the date of the reduction or suspension action, the remedy coordination official shall—

(1) Review the agency head's determination on which the reduction or suspension decision is based; and

(2) Transmit a recommendation to the agency head as to whether the reduction or suspension should continue.

[57 FR 3359, Jan. 29, 1992, as amended at 57 FR 42632, Sept. 15, 1992]

232.173–5 Reporting.

Departments and agencies, in accordance with department/agency procedures, shall prepare and submit to the Under Secretary of Defense (Acquisition & Technology), through the Director of Defense Procurement, annual reports (Report control symbol DD–ACQ(A) 1891) containing—

(a) Each recommendation made by the remedy coordination official for payments reduction or suspension;

(b) The actions taken on the recommendation(s), with the reasons for such actions; and

(c) An assessment of the effects of each action on the Government.

[57 FR 3359, Jan. 29, 1992, as amended at 57 FR 42632, Sept. 15, 1992; 60 FR 61598, Nov. 30, 1995]

Subpart 232.3—Loan Guarantees for Defense Production

232.302 Authority.

(a) The use of guaranteed loans as a contract financing mechanism requires the availability of certain congressional authority. The DoD has not requested such authority in recent years, and none is now available.

Subpart 232.4—Advance Payments

232.404 Exclusions.

(a)(9) The requirements of FAR subpart 32.4 do not apply to advertisements in high school and college publications for military recruitment efforts under 10 U.S.C. 503 when the contract cost does not exceed $500.

232.409 Contracting officer action.

232.409–1 Recommendation for approval.

To ensure uniform application of this subpart (see FAR 32.402(e)(1)), the departmental/agency contract financing office shall prepare the documents required by FAR 32.409–1 (e) and (f).

232.410 Findings, determination, and authorization.

(b) If an advance payment procedure is used without a special bank account, replace paragraph (a)(4) of the Findings, Determination, and Authorization for Advance Payments at FAR 32.410 with:

(4) The proposed advance payment clause contains appropriate provisions as security

for advance payments. These provisions include a requirement that the outstanding advance payments will be liquidated from cost reimbursements as they become due the contractor. This security is considered adequate to protect the interest of the Government.

232.412 Contract clause.

232.412–70 Additional clauses.

(a) Use the clause at 252.232–7000, Advance Payment Pool, in any contract that will be subject to the terms of an advance payment pool agreement with a nonprofit organization or educational institution. Normally, use the clause in all cost reimbursement type contracts with the organization or institution.

(b) Use the clause at 252.232–7001, Disposition of Payments, in contracts when payments under the contract are to be made by a disbursing office not designated in the advance payment pool agreement.

(c) Use the clause at 252.232–7005, Reimbursement of Subcontractor Advance Payments-DoD Pilot Mentor-Protege Program, when advance payments will be provided by the contractor to a subcontractor pursuant to an approved mentor-protege agreement (See subpart 219.71).

[56 FR 36409, July 31, 1991, as amended at 56 FR 67217, Dec. 30, 1991]

232.470 Advance payment pool.

(a) An advance payment pool agreement—

(1) Is a means of financing the performance of more than one contract held by a single contractor;

(2) Is especially convenient for the financing of cost-type contracts with nonprofit educational or research institutions for experimental or research and development work when several contracts require financing by advance payments. When appropriate, pooled advance payments may also be used to finance other types of contracts held by a single contractor; and

(3) May be established—

(i) Without regard to the number of appropriations involved;

(ii) To finance contracts for one or more department(s) or contracting activity(ies); or

(iii) In addition to any other advance payment pool agreement at a single contractor location when it is more convenient or otherwise preferable to have more than one agreement.

Subpart 232.5—Progress Payments Based on Costs

232.501 General.

In DoD, customary progress payments may be either uniform or flexible (FAR 32.501–1(a)). See also 232.501–1 and 232.502–1–71.

232.501–1 Customary progress payment rates.

(a)(i) The customary uniform progress payment rate for DoD contracts is 75 percent for large businesses, 90 percent for small businesses, and 95 percent for small disadvantaged businesses.

(ii) The progress payment rates applicable to foreign military sale requirements are the same rates applicable to DoD requirements.

(iii) For customary flexible progress payments, determine the appropriate rate using the appropriate CASH computer program (see 232.502–1–71).

[56 FR 36409, July 31, 1991, as amended at 56 FR 67217, Dec. 30, 1991; 58 FR 62046, Nov. 24, 1993]

232.501–2 Unusual progress payments.

(a) Unusual progress payment arrangements require the advance approval of the USD(A&T)DP. Contracting officers shall submit all unusual progress payment requests to the department or agency contract financing office for approval, coordination with the Contract Finance Committee (232.171), and submission to the USD(A&T)DP.

[56 FR 36409, July 31, 1991, as amended at 60 FR 61598, Nov. 30, 1995]

232.501–3 Contract price.

(b) The contracting officer may approve progress payments when the contract price exceeds the funds obligated under the contract; provided, the contract contains an appropriate Limitation of Funds clause. However, the contracting officer shall limit such payments to the lesser of—

(i) The applicable rate (i.e., the lower of the progress payment rate, the liquidation rate, or the loss-ratio adjusted rate); or

(ii) 100 percent of the funds obligated.

232.502 Preaward matters.

232.502–1 Use of customary progress payments.

(b)(1) If the contractor is a small disadvantaged business, progress payments may be provided when the contract will involve $50,000 or more.

232.502–1–70 Customary foreign military sale progress payments.

(a) Foreign military sale (FMS) progress payments apply to DoD acquisitions on behalf of foreign governments or international organizations (Section 22 of the Arms Export Control Act).

(b) FMS progress payments do not apply to acquisitions—

(1) For replenishing U.S. Government inventories or stocks; and

(2) Made under DoD cooperative logistic support arrangements.

232.502–1–71 Customary flexible progress payments.

(a) *General.* (1) Progress payments reduce contractor investment in work in process inventory. In addition to progress payments, other factors influence a contractor's actual investment in work in process inventory, e.g., delivery schedules, cash management practices, and Government payment practices.

(2) Progress payment amounts that are determined by using customary uniform rates are insensitive to the other factors influencing contractor investment in work in process inventory. Consequently, contractor investments in work in process inventory vary among contractors and contracts.

(3) Flexible progress payment rates are designed to tailor the progress payment rate to more closely match the contractor's cash needs for financing contract performance. The flexible rate is expressed as a percentage which is applied to costs to determine the amount payable as a progress payment, in the same manner as customary uniform rates are applied.

(4) For flexible progress payments, cash needs are measured and projected based on the investment required for the work in process inventory over the life of the contract. Total investment is measured by a weighted average of total costs paid by the contractor. The contractor's investment is the weighted average of the amount not paid by the Government.

(5) DoD, as a matter of policy, requires contractors to retain a minimum investment level in work in process inventory over the life of the contract (see Table 32–1, Customary Uniform Progress Payment Rates). This minimum investment level is based on the customary uniform progress payment rate and its related investment percentage. Accordingly, the DoD will make progress payments at a rate (expressed as a whole number) that is the highest rate which yields a corresponding investment by the contractor in work in process inventory of not less than the minimum investment percentage.

(6) The customary flexible progress payment rate will be determined by using the DoD Cash Flow Computer Model. The rate computed shall not—

(i) Exceed 100 percent; or

(ii) Be less than the customary uniform progress payment rate that would have been applied to the contract in the absence of customary flexible progress payments.

(7) Table 32–1, Customary Uniform Progress Payment Rates, shows the customary uniform progress payment rates for other than small or small disadvantaged businesses (see also 232.501–1), minimum contractor investment (except for contracts funded with FY87 appropriations), and the applicable DoD Cash Flow Computer Model. For contracts or line items that are funded with FY87 appropriations, a contractor must retain at least a 25 percent investment in work in process inventory over the life of the contract or over the contract performance period applicable to the contract line item.

TABLE 32–1—CUSTOMARY UNIFORM PROGRESS PAYMENT RATES

Contract award date	Uniform rate percentage	Investment percentage	Cash flow model
Prior to May 1, 1985	90	5	CASH–II
May 1, 1985 through October 17, 1986	80	15	CASH–III
October 18, 1986 through September 30, 1988	75	25	CASH–IV
October 1, 1988 through June 30, 1991	80	20	CASH–V
After June 30, 1991*	85	20	CASH–VI**

*Flexible progress payments shall not be used for contracts awarded as a result of solicitations issued on or after November 11, 1993.
**See paragraph (b)(5)(ii) for implementation instructions.

(b) *Using customary flexible progress payments.* (1) Use a flexible progress payment rate at the time of award or definitization instead of the customary uniform rate if—

(i) The contractor requests flexible progress payments;

(ii) The contractor agrees to the requirements of this section;

(iii) The contract contains the clause at FAR 52.232–16, Progress Payments. However, small business contractors may get flexible progress payments if they agree to use the clause at FAR 52.232–16 without its Alternate I; and

(iv) The criteria in paragraphs (b)(2) and (3) of this subsection are met.

(2) Do not use flexible progress payments for—

(i) Sealed bid contracts;

(ii) Undefinitized contract actions; or

(iii) Contracts awarded and performed entirely outside of the United States, its possessions or territories.

(3) Contractors who submit cost or pricing data, as defined in FAR 15.801, for negotiated fixed-price contracts in excess of $1 million may request flexible progress payments.

(4) Subcontractors who request flexible progress payments, meet the criteria in paragraph (b)(3) of this subsection, and agree to the requirements of this subsection are to receive flexible progress payments. The prime contractor determines the flexible progress payment rate without regard to the rate in the prime contract. In determining the appropriate customary flexible rate, the prime contractor will use the DoD Cash Flow Computer Model and review the cash flow data provided by the subcontractor.

(5) Prior to contract award, the contracting officer shall determine the customary flexible progress payment rate by applying the appropriate version of the DoD Cash Flow Computer Model.

(i) The model takes into account key cash flow factors including contract cost profile, delivery schedules, subcontractor progress payments, liquidation rates, and payment/reimbursement cycles. For contracts funded with FY87 appropriations, use the CASH–IV model.

(ii) From time to time the Department of Defense may change the uniform progress payment rate and/or the minimum contractor investment rate, which may have an effect upon the variables within the DoD Cash Flow Computer Program. In order to avoid frequent revision and redistribution of the computer program, the program is designed to permit use of either a particular model (CASH–II, CASH–V, etc.) or a program option to input the equivalent uniform progress payment rate and minimum contractor investment rate (90%/5%, 80%/20%, etc.), as shown in the table at (a)(7). Either method will result in the same flexible progress payment rate calculation. When the Cash Flow Computer Program does not contain the model needed for a particular situation, the contracting officer shall use the program option.

(6) If the contractor requests flexible progress payments after contract award or definitization, the contracting officer may, if warranted, grant their use. However, the contractor must provide adequate new consideration (see FAR 32.501–4).

(c) *Contractor cash flow and cost information.* (1) Contractors shall furnish to the contracting officer cash flow data in the form and context specified for use in the DoD Cash Flow Computer Model. Contractors should furnish cash flow data prior to the start of negotiations. This data includes—

(i) Actual and projected incurred cost, broken down by element of cost and by month, for the duration of the contract;

(ii) Float times for each element of cost;

(iii) Dates and lag times of actual and projected progress payment and delivery payment receipts; and

(iv) Associated contract price and profit percentage.

(2) Contracting officers shall verify the cash flow data using the procedures normally used to verify contractor cost and pricing data, and establish the customary flexible progress payment rate during the negotiation of the contract price.

(3) If any customary flexible progress payment rate is later determined to be overstated because factual data submitted in support of the rate computation was not current, accurate, or complete at the time the rate was established, the flexible progress payment clause at 252.232–7003 provides for—

(i) Reduction of the flexible progress payment rate; and

(ii) Contractor payment of interest.

(4) The contracting officer will assess the interest charge on the amount of the overpayment resulting from facts that were not current, accurate, or complete, whether or not the overpayment has been liquidated. Calculate the interest from the date of the overpayment to the date of liquidation of the overpayment. In determining the amount of interest, the contracting officer may determine an average overpayment amount and duration as the basis for the interest computation. Interest rates change periodically; therefore, calculate average amounts and durations separately for each interest period that has a different interest rate.

(5) Administrative contracting officers are encouraged to establish advance agreements at contractor locations for payment float and lag times which are common to several contracts. Float and lag times may vary significantly from one contract to another due to variances in efficiency at different payment offices or due to differing procedures for high dollar versus low dollar value contracts. It may, therefore, be appropriate to establish advance agreements on several different float and lag profiles to suit different contract situations.

(d) *Rate review.* (1) The flexible progress payment clause at 252.232–7003 provides for redetermination of the customary flexible progress payment rate whenever the computed investment percentage is more than two points above or below the specific minimum investment in work in process inventory (see Table at 232.502–1–71(a)(7)). When such a redetermination is made—

(i) Apply the new customary flexible progress payment rate to the next contractor progress payment request; and

(ii) Adjust the unliquidated progress payment balance.

(2) Either the Government or the contractor may request a rate review at any time to determine if the computed investment percentage in work in process inventory is outside of the investment tolerance in paragraph (d)(1) of this subsection. For contracts funded with FY87 appropriations, the investment range is 23 to 27 percent with a target of 25 percent.

(3) The administrative contracting officer shall assess changes in the following factors during each periodic review required by FAR 32.503–5 and shall review the customary flexible progress payment rate whenever there has been—

(i) A significant change in the float or lag factors;

(ii) A significant change in the delivery schedule; or

(iii) Substantial work added to or deleted from the contract.

(e) *Letter contracts and undefinitized orders.* When flexible progress payments are contemplated for use on a definitized contract superseding a letter contract or an unpriced BOA order, the applicable uniform customary progress payment rate shall be used until definitization. The flexible progress payment rate shall be determined by the contracting officer before definitizing the contract or order.

(f) *Availability of CASH program and user's guide.* The flexible progress payment program CASH and the user's

guide are available to offerors and contractors from the contracting officer.

[56 FR 36409, July 31, 1991, as amended at 56 FR 67217, Dec. 30, 1991; 58 FR 62046, Nov. 24, 1993; 58 FR 64353, Dec. 6, 1993; 62 FR 40473, July 29, 1997]

232.502 Contract clauses.

232.502–4–70 Additional clauses.

(a) Use the clause at 252.232–7002, Progress Payments for Foreign Military Sales Acquisitions, in any contract that provides for progress payments and contains foreign military sale requirements.

(b) Use the clauses at 252.232–7003, Flexible Progress Payments, and 252.232–7004, DoD Progress Payment Rates, in contracts using a customary flexible progress payment rate.

(c) Use the clause at 252.232–7004, DoD Progress Payment Rates, in addition to the clauses prescribed at FAR 32.502–4.

[56 FR 36409, July 31, 1991, as amended at 56 FR 67217, Dec. 30, 1991]

232.503 Postaward matters.

232.503–6 Suspension or reduction of payments.

(b) *Contractor noncompliance.* See also 242.7503.

(g) *Loss contracts.* Use the following loss ratio adjustment procedures for making adjustments required by FAR 32.503–6(f) and (g)—

(i) Except as provided in paragraph (g)(ii) of this subsection, the contracting officer shall prepare a supplementary analysis of the contractor's request for progress payments and calculate the loss ratio adjustment using the procedures in FAR 32.503–6(g).

(ii) The contracting officer may request the contractor to prepare the supplementary analysis as an attachment to the progress payment request when the contracting officer determines that the contractor's methods of estimating the ''Costs to Complete'' are reliable, accurate, and not susceptible to improper influences.

(iii) To maintain an audit trail and permit verification of calculations, do not make the loss ratio adjustments by altering or replacing data on the contractor's original request for progress payment (SF 1443, Contractor's Request for Progress Payment, or computer generated equivalent).

[56 FR 36409, July 31, 1991, as amended at 60 FR 29499, June 5, 1995]

232.503–15 Application of Government title terms.

(d) An administrative contracting officer (ACO) determination that the contractor's material management and accounting system conforms to the standard at 252.242–7004(f)(7) constitutes the contracting officer approval requirement of FAR 32.503–15(d). Prior to granting blanket approval of cost transfers between contracts, the ACO should determine that—

(i) The contractor retains records of the transfer activity that took place in the prior month;

(ii) The contractor prepares, at least monthly, a summary of the transfer activity that took place in the prior month; and

(iii) The summary report includes as a minimum, the total number and dollar value of transfers.

[56 FR 36409, July 31, 1991, as amended at 57 FR 42632, Sept. 15, 1992]

Subpart 232.6—Contract Debts

232.605 Responsibilities and cooperation among Government officials.

(b) Disbursing officers are those officials designated to make payments under a contract or to receive payments of amounts due under a contract. At installations where integrated accounting is in effect, the finance and accounting officer is a disbursing officer. The disbursing officer is responsible for determining the amount and collecting contract debts whenever overpayments or erroneous payments have been made. The disbursing officer also has primary responsibility when the amounts due and dates for payment are contained in the contract, and a copy of the contract has been furnished to the disbursing officer with notice to collect as amounts become due.

232.606 Debt determination and collection.

(c)(9)(vii) Upon transfer of a case to the contract financing office, the contracting officer shall close the debt record by reference to the date of transfer.

232.610 Demand for payment of contract debt.

(a)(i) For contract debts resulting from other than a termination for default, the office which first determines an amount due, whether it be the contract administration office, the contracting office, the disbursing office, or the selling office/agency, shall—

(A) Make a demand for payment; and

(B) Provide a copy of the demand to the payment office cited in the contract.

(ii) For contract debts resulting from a termination for default, the contracting officer shall make the demand and direct the debtor to make such payment to the designated office.

(b)(3) The contracting office shall forward deferment requests to the contract financing office of the contracting department or agency for a decision on granting the deferment.

232.616 Compromise actions.

Only the department/agency contract financing offices (232.108(1)) are authorized to compromise debts covered by this subpart.

232.617 Contract clause.

(a) The DoD Contract Finance Committee, with the approval of the USD(A&T)DP, may exempt the contracts in FAR 32.617(a) (2) through (5) and other contracts, in exceptional circumstances, from the administrative interest charges required by this subpart.

(a)(7) Other exceptions—

(A) Contracts for instructions of military or ROTC personnel at civilian schools, colleges, and universities;

(B) Basic agreements with telephone companies for communications services and facilities, and purchases under such agreements; and

(C) Transportation contracts with common carriers for common carrier services.

[56 FR 36409, July 31, 1991, as amended at 60 FR 61598, Nov. 30, 1995]

232.670 Transfer of responsibility for debt collection.

Disbursing officers will transfer responsibility for debt collection to departmental/agency contract financing offices in accordance with comptroller regulations. Notwithstanding the transfer of the debt collection responsibility, contracting officers shall continue to provide assistance as requested by the debt collection office.

232.671 Bankruptcy reporting.

(a) For those debts covered by this subpart, the department or agency which awarded the contract shall furnish the Department of Justice any claims in bankruptcy, insolvency, or in proceedings for reorganization or arrangement. Furnish claims which—

(1) Have been transferred to a contract financing office;

(2) Are on the way to a contract financing office at the inception of bankruptcy or insolvency proceedings;

(3) Are pending and not forwarded to a contract financing office at the inception of bankruptcy or insolvency proceedings; and

(4) Are the result of bankruptcy or insolvency proceedings.

(b) The contract financing office or other office designated within a department or agency will furnish proof of claims to the Department of Justice.

(c) The office of origin of a debt will provide, as soon as possible, information on a bankruptcy, insolvency, reorganization, or rearrangement to the office designated within a department/agency to receive this information.

(d) The information and proof of claim requirements in paragraphs (b) and (c) of this section do not apply to debts of less than $600.

Subpart 232.7—Contract Funding

SOURCE: 58 FR 46092, Sept. 1, 1993, unless otherwise noted.

232.702 Policy.

Fixed-price contracts shall be fully funded except as permitted by 232.703–1.

232.703 Contract funding requirements.

232.703–1 General.

(1) A fixed-price contract may be incrementally funded only if—

(i) The contract is funded with research and development appropriations;

(ii) Congress has otherwise incrementally appropriated program funds; or

(iii) The head of the contracting activity approves the use of incremental funding for either base services contracts or hazardous/toxic waste remediation contracts.

(2) Incrementally funded fixed-price contracts shall be fully funded as soon as practicable after full funding is available.

232.703–70 Military construction appropriations act restriction.

Annual military construction appropriations acts restrict the use of funds appropriated by the acts for payments under cost-plus-fixed-fee contracts (see 216.306(c)).

[61 FR 7744, Feb. 29, 1996]

232.704 Limitation of cost or funds.

232.704–70 Incrementally funded fixed-price contracts.

(a) Upon receipt of the contractor's notice under paragraph (c) of the clause at 252.232–7007, Limitation of Government's Obligation, the contracting officer shall promptly provide written notice to the contractor that the Government is—

(1) Allotting additional funds for continued performance and increasing the Government's limitation of obligation in a specified amount;

(2) Terminating the contract; or

(3) Considering whether to allot additional funds; and

(i) The contractor is entitled by the contract terms to stop work when the Government's limitation of obligation is reached; and

(ii) Any costs expended beyond the Government's limitation of obligation are at the contractor's risk.

(b) Upon learning that the contract will receive no further funds, the contracting officer shall promptly give the contractor written notice of the Government's decision and terminate for the convenience of the Government.

(c) The contracting officer shall ensure that, in accordance with paragraph (b) of the clause at 252.232–7007, Limitation of Government's Obligation, sufficient funds are allotted to the contract to cover the total amount payable to the contractor in the event of termination for the convenience of the Government.

232.705 Contract clauses.

232.705–70 Clause for limitation of Government's obligation.

Use the clause at 252.232–7007, Limitation of Government's Obligation, in solicitations and resultant incrementally funded fixed-price contracts. The contracting officer may revise the contractor's notification period, in paragraph (c) of the clause, from ''ninety'' to ''thirty'' or ''sixty'' days, as appropriate.

Subpart 232.8—Assignment of Claims

232.803 Policies.

(b) Only contracts for personal services may prohibit the assignment of claims.

(d) Pursuant to Section 3737(e) of the Revised Statutes (41 U.S.C. 15), and in accordance with Presidential delegation dated October 3, 1995, Secretary of Defense delegation dated February 5, 1996, and Under Secretary of Defense for Acquisition and Technology delegation dated February 23, 1996, the Director of Defense Procurement determined on May 10, 1996, that a need exists for DoD to agree not to reduce or set off any money due or to become due under the contract when the proceeds under the contract have been assigned in accordance with the Assignment of Claims provision of the contract. This determination was published in the FEDERAL REGISTER on June 11, 1996, as required by law. Nevertheless, if departments/agencies decide it is in the Government's interests, or if the contracting officer makes a determination

in accordance with FAR 32.803(d) concerning a significantly indebted offeror, they may exclude the no-setoff commitment.

[56 FR 36409, July 31, 1991, as amended at 61 FR 50454, Sept. 26, 1996]

232.805 Procedure.

(b) The assignee shall forward—

(i) To the administrative contracting officer (ACO), a true copy of the instrument of assignment and an original and three copies of the notice of assignment. The ACO shall acknowledge receipt by signing and dating all copies of the notice of assignment and shall—

(A) File the true copy of the instrument of assignment and the original of the notice in the contract file;

(B) Forward two copies of the notice to the disbursing officer of the payment office cited in the contract;

(C) Return a copy of the notice to the assignee; and

(D) Advise the contracting officer of the assignment.

(ii) To the surety or sureties, if any, a true copy of the instrument of assignment and an original and three copies of the notice of assignment. The surety shall return three acknowledged copies of the notice to the assignee, who shall forward two copies to the disbursing officer designated in the contract.

(iii) To the disbursing officer of the payment office cited in the contract, a true copy of the instrument of assignment and an original and one copy of the notice of assignment. The disbursing officer shall acknowledge and return to the assignee the copy of the notice and shall file the true copy of the instrument and original notice.

232.806 Contract clause.

(a)(1) Use the clause at 252.232–7008, Assignment of Claims (Overseas), instead of the clause at FAR 52.232–23, Assignment of Claims, in solicitations and contracts when contract performance will be in a foreign country.

(2) Use Alternate I with the clause at FAR 52.232–23, Assignment of Claims, unless otherwise authorized under 232.803(d).

[62 FR 34126, June 24, 1997]

Subpart 232.9—Prompt Payment

232.903 Policy.

DoD policy is to assist small disadvantaged business concerns by paying them as quickly as possible after invoices are received and before normal payment due dates established in the contract (see 232.905(2)).

232.905 Invoice payments.

(1) In most cases, Government acceptance or approval can occur within the 7 day constructive acceptance period specified in the FAR Prompt Payment clauses. Government payment of construction progress payments can, in most cases, be made within the 14 day period allowed by the Prompt Payment for Construction Contracts clause. While the contracting officer may specify a longer period because the period specified in the contract is not reasonable or practical, such change should be coordinated with the Government offices responsible for acceptance or approval and for payment. Reasons for specifying a longer period include but are not limited to: the nature of the work or supplies or services, inspection or testing requirements, shipping and acceptance terms, and resources available at the acceptance activity. A constructive acceptance period of less than the cited 7 or 14 days is not authorized.

(2) Designated payment offices are encouraged to pay small disadvantaged business (SDB) concerns as quickly as possible after invoices are received and before normal payment due dates established in the contract. The restrictions of FAR 32.903 prohibiting early payment do not apply to invoice payments made to SDBs. Contractors shall not, however, be entitled to interest penalties if invoice payments are not made before the normal payment due dates established in the contract.

(f)(6) DoD Manual 4000.25–5–M, Military Standard Contract Administration Procedures (MILSCAP), authorizes electronic signature of receiving reports.

232.906 Contract financing payments.

(a)(i) DoD policy is to make contract financing payments as quickly as possible. Generally, the contracting officer shall insert the standard due dates of 7 days for progress payments and 14 days for interim payments on cost type contracts in subparagraphs (b)(2) of the Prompt Payment clauses at FAR 52.232–25, 52.232–26, and 52.232–27.

(ii) The contracting officer should coordinate payment terms with offices that will be involved in the payment process to ensure that terms specified can be met. Where justified, the contracting officer may insert a due date greater than but not less than the standard. In determining payment terms, consider—

(A) Geographical separation;

(B) Workload;

(C) Contractor ability to submit a proper request; and

(D) Other factors that could affect timing of payment.

232.970 Payment of subcontractors.

232.970–1 Subcontractor assertions of nonpayment.

(a) In accordance with Public Law 102–190, title VIII, section 806(a)(4), upon the assertion by a subcontractor or supplier of a DoD contractor that the subcontractor or supplier has not been paid in accordance with the payment terms of the subcontract, purchase order, or other agreement with the prime contractor, the contracting officer may determine—

(1) For a construction contract, whether the contractor has made—

(i) Progress payments to the subcontractor or supplier in compliance with chapter 39 of title 31, United States Code (Prompt Payment Act);

(ii) Final payment to the subcontractor or supplier in compliance with the terms of the subcontract, purchase order, or other agreement with the prime contractor;

(2) For a contract other than construction, whether the contractor has made progress payments, final payments, or other payments to the subcontractor or supplier in compliance with the terms of the subcontract, purchase order, or other agreement with the prime contractor;

(3) For any contract, whether the contractor's certification of payment of a subcontractor or supplier accompanying its payment request to the Government is accurate.

(b) If, in making the determination in paragraphs (a) (1) and (2) of this subsection, the contracting officer finds the prime contractor is not in compliance, the contracting officer may—

(1) Encourage the contractor to make timely payment to the subcontractor or supplier; or

(2) If authorized by the applicable payment clauses, reduce or suspend progress payments to the contractor.

(c) If the contracting officer determines that a certification referred to in (a)(3) of this subsection is inaccurate in any material respect, the contracting officer shall initiate administrative or other remedial action.

[57 FR 42707, Sept. 16, 1992]

232.970–2 Subcontractor requests for information.

(a) In accordance with Public Law 102–190, title VIII, section 806(a)(1), upon the request of a subcontractor or supplier under a DoD contract, the contracting officer shall promptly advise the subcontractor or supplier as to—

(1) Whether the prime contractor has submitted requests for progress payments or other payments under the contract to DoD; and

(2) Whether final payment has been made by the DoD to the prime contractor.

(b) This subsection does not apply to matters that are—

(1) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy; and

(2) Properly classified pursuant to such Executive Order (see 5 U.S.C. 552(b)(1)).

[57 FR 42708, Sept. 16, 1992]

PART 233—PROTESTS, DISPUTES, AND APPEALS

Sec.

Subpart 233.2—Disputes and Appeals

233.204 Policy.
233.210 Contracting officer's authority.

233.215 Contract clause.
233.215–70 Additional contract clause.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36416, July 31, 1991, unless otherwise noted.

Subpart 233.2—Disputes and Appeals

233.204 Policy.

When it would be helpful in reviewing the current claim, the contracting officer should get information on claims previously filed by the contractor with other contracting officers.

233.210 Contracting officer's authority.

DFARS 243.105(a) limits contracting officer authority.

233.215 Contract clause.

Use Alternate I of the clause at FAR 52.233–1, Disputes, when—

(1) The acquisition is for—

(i) Aircraft

(ii) Spacecraft and launch vehicles

(iii) Naval vessels

(iv) Missile systems

(v) Tracked combat vehicles

(vi) Related electronic systems;

(2) The contracting officer determines that continued performance is—

(i) Vital to the national security, or

(ii) Vital to the public health and welfare; or

(3) The head of the contracting activity determines that continued performance is necessary pending resolution of any claim that might arise under or be related to the contract.

[56 FR 36416, July 31, 1991. Redesignated at 62 FR 34126, June 24, 1997]

233.215–70 Additional contract clause.

Use the clause at 252.233–7001, Choice of Law (Overseas), in solicitations and contracts when contract performance will be outside of the United States, it possessions, and Puerto Rico, unless otherwise provided for in a government-to-government agreement.

[62 FR 34126, June 24, 1997]

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 234—MAJOR SYSTEM ACQUISITION

Sec.
234.001 Definitions.
234.003 Responsibilities.
234.005 General requirements.
234.005–70 Earned value management systems.
234.005–71 Solicitation provision and contract clause.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

234.001 Definitions.

Systems means a combination of elements that will function together to produce the capabilities required to fulfill a mission need.

Systems acquisition means the design, development, and production of new systems. It also includes modifications to existing systems that involve redesign of the systems or subsystems.

[60 FR 61598, Nov. 30, 1995]

234.003 Responsibilities.

DoD 5000.1, Defense Acquisition, and DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs, contain the DoD implementation of OMB Circular A–109.

[62 FR 34126, June 24, 1997]

234.005 General requirements.

234.005–70 Earned value management systems.

When an offeror provides an earned value management system (EVMS) plan as part of its proposal in accordance with the provision at 252.234–7000, the contracting officer shall forward a copy of the plan to the cognizant administrative contracting officer (ACO). The procuring contracting officer shall obtain the assistance of the ACO in determining the adequacy of the proposed EVMS plan.

[62 FR 9991, Mar. 5, 1997]

234.005–71 Solicitation provision and contract clause.

When the Government requires contractor compliance with DoD earned value management system criteria—

(a) Use the provision at 252.234–7000, Notice of Earned Value Management System, in solicitations; and

(b) Use the clause at 252.234–7001, Earned Value Management System, in solicitations and contracts.

[62 FR 9991, Mar. 5, 1997; 62 FR 11953, Mar. 13, 1997]

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.
235.001 Definitions.
235.002 General.
235.006 Contracting methods and contract type.
235.007 Solicitations.
235.010 Scientific and technical reports.
235.015 Contracts for research with educational institutions and nonprofit organizations.
235.015–70 Special use allowances for research facilities acquired by educational institutions.
235.015–71 Short form research contract (SFRC).
235.016 Broad agency announcement.
235.017 Federally Funded Research and Development Centers.
235.017–1 Sponsoring agreements.
235.070 Indemnification against unusually hazardous risks.
235.070–1 Indemnification under research and development contracts.
235.070–2 Indemnification under contracts involving both research and development and other work.
235.070–3 Contract clauses.
235.071 Additional contract clauses.

Subpart 235.70—Research and Development Streamlined Contracting Procedures—Test

235.7000 Scope.
235.7001 Definitions.
235.7002 Applicability.
235.7003 [Reserved]
235.7004 The research and development streamlined solicitation (RDSS).
235.7004–1 General.
235.7004–2 Solicitation procedures.
235.7004–3 Proposal evaluation and contract award procedures.

235.7005 The research and development streamlined contract (RDSC).
235.7006 The research and development streamlined contracting format.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36416, July 31, 1991, unless otherwise noted.

235.001 Definitions.

The following terms are defined in DoD 7000.14–R, Financial Management Regulation. As used in this part—

Advanced development means all effort directed toward projects which have moved into the development of hardware for test. The prime proof of this type of effort is proof of design concept rather than the development of hardware. Projects in this category have a potential military application.

Basic research means all effort of scientific study and experimentation directed toward increasing knowledge and understanding in those fields of the physical, engineering, environmental, and life sciences related to long-term national security needs, It provides fundamental knowledge required for the solution of military problems. It forms a part of the base for—

(1) Subsequent exploratory and advanced developments in defense related technologies; and

(2) New or improved military functional capabilities in areas such as communications, detection, tracking, surveillance, propulsion, mobility, guidance and control, navigation, energy conversion, materials and structures, and personnel support.

Demonstration/validation means those efforts necessary to evaluate integrated technologies in as realistic an operating environment as possible to assess the performance or cost reduction potential of advanced technology. The demonstration/validation phase is system specific and also includes advanced technology demonstrations that help expedite technology transition from the laboratory to operational use.

Engineering and manufacturing development means those projects in full-scale engineering development but which have not yet received approval for production or had production funds included in the DoD budget submission for the budget or subsequent fiscal year. This area is characterized by major line item projects where program control is exercised by review of individual projects.

Exploratory development means all effort directed toward the solution of specific military problems, short of major development projects. This type of effort may vary from fairly fundamental applied research to quite sophisticated bread-board hardware, study, programming, and planning efforts. It would thus include studies, investigations, and minor development effort. The dominant characteristic of this category of effort is that it be pointed toward specific military problem areas with a view toward developing and evaluating the feasibility and practicability of proposed solutions and determining their parameters.

Management and support means all effort directed toward support of installations and operations required for general research and development use. This includes military construction of a general nature unrelated to specific programs, maintenance support of laboratories, operation and maintenance of test ranges, and maintenance of test aircraft and ships. Costs of laboratory personnel, either in-house or contracted, would be assigned to projects or as a line item in the research, exploratory development, or advanced development program areas, as appropriate. Management and support is not ''research and development'' except in exceptional cases. For example, construction of recreational facilities at an installation is not ''research and development'' work, even if the installation is used only for research and development work.

Operational system development means those projects still in full-scale engineering development, but which have received approval for production through Defense Acquisition Board or other action, or production funds have been included in the DoD budget submission for the budget or subsequent year. All items in this area are major line item projects which appear as RDT&E costs of weapons systems elements in other programs. Program control is exercised by review of the individual projects.

Research and development ordinarily covers only the following categories—

(1) Basic research;

(2) Exploratory development;

(3) Advanced development;

(4) Demonstration/validation;

(5) Engineering and manufacturing development; and

(6) Operational system development.

[60 FR 29499, June 5, 1995]

235.002 General.

Contracts for research and development may not be performed over a period exceeding ten years from the date of initial award, unless the department or agency notifies Congress (10 U.S.C. 2352).

(1) The head of the agency shall notify Congress whenever—

(i) It is expected, at the time of award, or as a result of a modification, that the period of performance will exceed ten years from the initial award date; or

(ii) Performance has extended beyond ten years from the initial award date and no notice has otherwise been provided to Congress.

(2) The notice shall—

(i) Identify the contract;

(ii) State the initial award date;

(iii) State the expected period of performance; and

(iv) Be submitted not later than 30 days after—

(A) The initial award date or date of modification, as applicable; or

(B) The date on which performance exceeds ten years if no prior notice was given.

[57 FR 14994, Apr. 23, 1992]

235.006 Contracting methods and contract type.

(a) All contracts under the Manufacturing Technology Program (see DoDI 4200.15, Manufacturing Technology Program) shall be awarded using competitive procedures (10 U.S.C. 2525).

(b)(i) A fixed-price type contract shall not be awarded for a development program effort unless—

(A) The level of program risk permits realistic pricing;

(B) The use of a fixed-price type contract permits an equitable and sensible allocation of program risk between the Government and the contractor; and

(C) A written determination that the criteria of paragraphs (b)(i)(A) and (B) of this section have been met is executed—

(*1*) By the Under Secretary of Defense (Acquisition and Technology) (USD(A&T)) for—

(*i*) Research and development for non-major systems, if the contract is over $25 million;

(*ii*) The lead ship of a class;

(*iii*) The development of a major system (as defined in FAR 2.101) or subsystem thereof, if the contract is over $25 million, or is over $10 million and is funded with FY90 funds (Pub. L. 101–165, section 9048), FY91 funds (Pub. L. 101–511, section 8038), FY92 funds (Pub. L. 102–172, section 8037), or FY93 funds (Pub. L. 102–396, section 9037).

(*2*) By the contracting officer for any development not covered by paragraph (b)(i)(C)(*1*) of this section.

(ii) The contracting officer must obtain USD(A&T) approval of the Government's prenegotiation position before negotiations begin and must obtain USD(A&T) approval of the negotiated agreement with the contractor before the agreement is executed for any action that is—

(A) An increase of more than $250 million in the price or ceiling price of a fixed-price type development contract, or a fixed-price type contract for the lead ship of a class;

(B) A reduction in the amount of work under a fixed-price type development contract or a fixed-price type contract for the lead ship of a class, when the value of the work deleted is $100 million or more; or

(C) A repricing of fixed-price type production options to a development contract, or a contract for the lead ship of a class, which increases the price or ceiling price by more than $250 million for equivalent quantities.

(iii) Notify the USD(A&T) of an intent not to exercise a fixed-price production option on a development contract for a major weapon system reasonably in advance of the expiration of the option exercise period.

(iv) A cost-sharing arrangement (see FAR 16.303) must be used for contracts

awarded in support of the Manufacturing Technology Program, unless an alternative is approved by the Secretary of Defense (10 U.S.C. 2525). Approval by the Secretary of Defense to use other than a cost-sharing arrangement for the Manufacturing Technology Program must be based on a determination that the contract is for a program that—

(A) Is not likely to have any immediate and direct commercial application;

(B) Is of sufficiently high risk to discourage cost sharing by non-Federal Government sources; or

(C) Will be carried out by an institution of higher education.

[56 FR 36416, July 31, 1991, as amended at 57 FR 14994, Apr. 23, 1992; 58 FR 28471, May 13, 1993; 59 FR 27673, May 27, 1994; 60 FR 4570, Jan. 24, 1995; 60 FR 29500, June 5, 1995; 61 FR 50454, Sept. 26, 1996; 62 FR 34126, June 24, 1997]

235.007 Solicitations.

(g) To ensure that prospective offerors fully understand the details of the work, the contracting officer may include the Government's estimate of the man-year effort under a research contract.

235.010 Scientific and technical reports.

(b) The Defense Technical Information Center (DTIC) is responsible for collecting all scientific or technological observations, findings, recommendations, and results derived from DoD endeavors, including both in-house and contracted efforts. The DTIC has eligibility and registration requirements for use of its services. Requests for eligibility and registration information should be addressed to DTIC–BCS, 8725 John J. Kingman Road, Suite 0944, Fort Belvoir, VA 22060–0944.

[60 FR 29500, June 5, 1995, as amended at 62 FR 34126, June 24, 1997]

235.015 Contracts for research with educational institutions and nonprofit organizations.

(b) *Basic agreements.*

(3) When using a basic agreement—

(i) Incorporate it by reference in section I of the contract; and

(ii) Incorporate any special clause requirements in section H.

[59 FR 27673, May 27, 1994]

235.015–70 Special use allowances for research facilities acquired by educational institutions.

(a) *Definitions.* As used in this subsection—

(1) *Research facility* means—

(i) Real property, other than land; and

(ii) Includes structures, alterations, and improvements, acquired for the purpose of conducting scientific research under contracts with departments and agencies of the DoD.

(2) *Special use allowance* means a negotiated direct or indirect allowance—

(i) For construction or acquisition of buildings, structures, and real property, other than land; and

(ii) Where the allowance is computed at an annual rate exceeding the rate which normally would be allowed under FAR subpart 31.3.

(b) *Policy.* (1) Educational institutions are to furnish the facilities necessary to perform Defense contracts. FAR 31.3 governs how much the Government will reimburse the institution for the research programs. However, in extraordinary situations, the Government may give special use allowances to an educational institution when the institution is unable to provide the capital for new laboratories or expanded facilities needed for Defense contracts.

(2) Decisions to provide a special use allowance must be made on a case-by-case basis, using the criteria in paragraph (c) of this subsection.

(c) *Authorization for special use allowance.* The head of a contracting activity may approve special use allowances only when all of the following conditions are met—

(1) The research facility is essential to the performance of DoD contracts;

(2) Existing facilities, either Government or nongovernment, cannot meet program requirements practically or effectively;

(3) The proposed agreement for special use allowances is a sound business arrangement;

(4) The Government's furnishing of Government-owned facilities is undesirable or impractical; and

(5) The proposed use of the research facility is to conduct essential Government research which requires the new or expanded facilities.

(d) *Application of the special use allowance.* (1) In negotiating a special use allowance—

(i) Compare the needs of DoD and of the institution for the research facility to determine the amount of the special use allowance;

(ii) Consider rental costs for similar space in the area where the research facility is or will be located to establish the annual special use allowance;

(iii) Do not include or allow—

(A) The costs of land; or

(B) Interest charges on capital;

(iv) Do not include maintenance, utilities, or other operational costs;

(v) The period of allowance generally will be—

(A) At least ten years; or

(B) A shorter period if the total amount to be allowed is less than the construction or acquisition cost for the research facility;

(vi) Generally, provide for allocation of the special use allowance equitably among the Government contracts using the research facility;

(vii) Special use allowances apply only in the years in which the Government has contracts in effect with the institution. However, if in any given year there is a reduced level of Government research effort which results in the special use allowance being excessive compared to the Government research funding, a separate special use allowance may be negotiated for that year;

(viii) Special use allowances may be adjusted for the period before construction is complete if the facility is partially occupied and used for Government research during that period.

(2) A special use allowance may be based on either total or partial cost of construction or acquisition of the research facility.

(i) When based on total cost neither the normal use allowance nor depreciation will apply—

(A) During the special use allowance period; and

(B) After the educational institution has recovered the total construction or acquisition cost from the Government or other users.

(ii) When based on partial cost, normal use allowance and depreciation—

(A) Apply to the balance of costs during the special use allowance period to the extent negotiated in the special use allowance agreement; and

(B) Do not apply after the special use allowance period, except for normal use allowance applied to the balance.

(3) During the special use allowance period, the research facility—

(i) Shall be available for Government research use on a priority basis over nongovernment use; and

(ii) Cannot be put to any significant use other than that which justified the special use allowance, unless the head of the contracting activity, who approved the special use allowance, consents.

(4) The Government will pay only an allocable share of the special use allowance when the institution makes any substantial use of the research facility for parties other than the Government during the period when the special use allowance is in effect.

(5) In no event shall the institution be paid more than the acquisition costs.

[56 FR 36416, July 31, 1991, as amended at 60 FR 29500, June 5, 1995]

235.015–71 Short form research contract (SFRC).

(a) *Scope.* This section prescribes procedures for contracting within the U.S. for research on a cost-reimbursement basis with educational institutions or nonprofit organizations whose primary purpose is the conduct of scientific research.

(b) *Definitions.* As used in this section—

(1) *Educational institution* means an institution of higher learning which—

(i) Provides facilities for teaching and research; and

(ii) Is authorized to grant academic degrees.

(2) *Nonprofit organization* means—

(i) Organizations of the type—

(A) Described in section 501 (c)(3) and (d) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)); and

(B) Exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)); or

(ii) Any nonprofit scientific organization qualified under a state nonprofit organization statute.

(3) *Research* includes all effort described as research in 235.001, including that part of exploratory development applicable to applied research.

(c) *Applicability*. (1) Do not use the SFRC for any purpose other than as described in this section.

(2) The procedures in this section may be used if—

(i) The principal purpose of the acquisition is research from an educational institution or a nonprofit organization;

(ii) The effort will be on a cost-reimbursement basis;

(iii) The basis for award is—

(A) A basic research proposal responding to a broad agency announcement (FAR 6.102(d)(2)); or

(B) An unsolicited research proposal (FAR 6.302–1); or

(C) A proposal establishing or maintaining an essential engineering, research, or development capability (FAR 6.302–3); and

(iv) The contract requires the delivery of designs, drawings, or reports as end items.

(d) *Content of research proposal.* Research proposals submitted under this section must contain—

(1) All the information in FAR 15.505;

(2) A statement of work complying with FAR 35.005, and a breakdown of the time the principal investigator and any associates will devote to the contract (see FAR 35.015(a)). The breakdown will be by work-days, work-months, or work-years;

(3) The executed representations on DD Form 2222–1, Representations and Certifications from Offerors Submitting Proposals Under DFARS 235.70. (Representations and certifications submitted on a one-time basis to each contracting office are valid for all SFRC contract awards made by that office only if the offeror in each proposal references the one-time submission and confirms its validity.);

(4) A statement that the Government may award a contract under the procedures of this section;

(5)(i) Identification of property in the Contractor-Acquired Property clause by showing for each item, when possible—

(A) The description of the property; and

(B) The estimated or known cost;

(ii) The description of the property should be detailed enough to enable the contracting officer—

(A) To determine whether the Government will furnish such property under FAR 35.014 and FAR 45.302–1; and

(B) For property which may be contractor-acquired (versus Government-furnished)—

(*1*) To accept it as advance notification required by FAR 52.244–2; and

(*2*) To authorize acquisition at time of award;

(iii) If the offeror proposes to acquire facilities (FAR 45.301), the offeror shall include a written statement which—

(A) Explains why acquiring these items with contract funds is necessary; and

(B) Expresses the offeror's unwillingness or financial inability to acquire the items with the offeror's own resources;

(iv) Special test equipment or components proposed. Individual items of less than $1,000 may be grouped by category (FAR 45.307–2);

(6) A SF 1411, Contract Pricing Proposal Cover Sheet, or acceptable substitute. FAR 52.244–2(b) prescribes information required for subcontracts;

(7) Markings complying with FAR 15.509 on the title page and each restricted sheet if the proposal includes data that the offeror does not want disclosed for any purpose other than evaluation. In addition, the offeror should state in the offer or check Block A on page 2 of the DD Form 2222–2 if the offeror grants the Government permission to have nongovernment evaluators review the proposal;

(8) The following statement:

This proposal incorporates by reference, and makes a part thereof, all applicable clauses in DFARS 235.015–71(i) in effect on the effective date of the contract or such other dates as may be mutually agreed upon.

(9) Any other applicable FAR or DFARS clauses agreed to by the parties;

(10) Monthly expenditure estimates by which incremental funding periods may be calculated; and

(11) An executed DD Form 2222–2, Short Form Research Contract Research Proposal Cover Page.

(e) *Contracting procedures.*

(1) The contracting officer may award a SFRC under full and open competition (FAR Subpart 6.1) when the proposal—

(i) Is in response to a broad agency announcement under FAR 6.102(d)(2);

(ii) Contains the information required by 235.015–71(d); and

(iii) Has been recommended for award under the peer or scientific review procedures of FAR 6.102(d)(2).

(2) The contracting officer may award an SFRC under other than full and open competition (FAR subpart 6.3) when—

(i) The proposal is an unsolicited research proposal submitted, evaluated, and accepted under FAR subpart 15.5, which meets the criteria of FAR 6.302–1; or

(ii) Award is necessary to establish or maintain an essential engineering research or development capability under FAR 6.302–1.

(3) When a research proposal (solicited or unsolicited) is satisfactory to the Government, the contracting officer should accept the proposal by executing a SFRC incorporating—

(i) The proposal by reference, or

(ii) The statement of work by reference.

(4) When acceptance of the entire research proposal is not advantageous to the Government, the contracting officer should use the acceptable parts of the research proposal. These parts may be either attached or incorporated by reference to develop a contract for execution by both parties. In this event, the contractor must sign the SFRC before the Government signs.

(5) Use the DD Form 2222, Short Form Research Center (SFRC) Modification, to effect modifications.

(6) The initial dollar amount and period of performance specified in the award document shall include the initial research program only. The SFRC shall identify separately the options, periods of performance, and costs, if appropriate.

(7) FAR 35.014 applies to vesting of title in property to organizations defined in 235.015–71(b). DD Form 2222 shall identify property, title to which is not vested in the contractor, or for which a determination of title is deferred.

(8) The offeror's submission of its proposal under this section 235.015–71 constitutes the offeror's agreement to be bound by all terms and conditions of the resulting contract.

(f) *Advance payments.* The contracting officer shall ensure that SFRCs awarded to institutions and organizations authorized to receive advance payments under FAR subpart 32.4 are clearly marked to read ''Advance Payment Pool Contract.''

(g) *Method of funding.* If incrementally funded, the SFRC shall specify—

(1) The total estimated cost for the full period of the research program, both funded and unfunded; and

(2) The amount of funds currently obligated.

(h) *Uniform contract format.* The SFRC is exempt from uniform contract format requirements (FAR 15.406).

(i) *SFRC clauses.* (1) Include in the contract any FAR or DFARS clause agreed to by the parties and incorporate it by reference or full text, as appropriate.

(2) The following clauses should be incorporated by reference in all SFRC awards of $25,000 or more. Clauses with a single asterisk (*) apply to educational institutions only. Clauses with a double asterisk (**) apply to nonprofit organizations only.

FAR 52.202–1 Definitions
FAR 52.203–1 Officials Not to Benefit
FAR 52.203–3 Gratuities
FAR 52.203–5 Covenant Against Contingent Fees
FAR 52.203–6 Restrictions on Subcontractor Sales to the Government
FAR 52.203–7 Anti-Kickback Procedures
252.203–7001 Special Prohibition on Employment
**FAR 52.203–10 Price or Fee Adjustment for Illegal or Improper Activity
FAR 52.209–6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment
252.209–7000 Acquisitions from Subcontractors Subject to On-Site Inspection Under the Intermediate-Range Nuclear Forces (INF) Treaty

FAR 52.215–2 Audit and Records—Negotiation
FAR 52.215–26 Integrity of Unit Prices
**FAR 52.215–30 Facilities Capital Cost of Money (Applies if contract is subject to commercial cost principles, FAR Subpart 31.2)
**FAR 52.215–31 Waiver of Facilities Capital Cost of Money (Applies if contractor does not propose facilities capital cost of money.)
FAR 52.215–33 Order of Precedence
FAR 52.216–7 Allowable Cost and Payment
*FAR 52.216–15 Predetermined Indirect Cost Rates (Applies only when the contractor has an executed negotiation agreement with the cognizant contract administration office. Predetermined rate agreements in effect on the date of the contract shall be incorporated in the contract schedule.)
FAR 52.219–8 Utilization of Small Business and Small Disadvantaged Business Concerns
FAR 52.219–13 Utilization of Women-Owned Small Businesses
FAR 52.220–3 Utilization of Labor Surplus Area Concerns
FAR 52.222–3 Convict Labor
FAR 52.222–26 Equal Opportunity (Add Alternate I as a special provision when applicable.)
FAR 52.222–35 Affirmative Action for Special Disabled and Vietnam Era Veterans
FAR 52.222–36 Affirmative Action for Handicapped Workers
FAR 52.222–37 Employment Reports on Special Disabled Veterans and Veterans of Vietnam Era
FAR 52.223–6 Drug-Free Workplace
FAR 52.225–13 Restrictions on Contracting with Sanctioned Persons
252.225–7016 and Restriction on Acquisition of Foreign Machine Tools
and Alternate I (if applicable)
FAR 52.227–1 and Alternate I Authorization and Consent
FAR 52.227–2 Notice and Assistance Regarding Patent and Copyright Infringement
FAR 52.227–14 Rights in Data—General (Specify applicable Alternate in contract.)
252.227–7013 and Alternate I Rights in Technical Data and Computer Software
252.227–7018 Restrictive Markings on Technical Data
252.227–7029 Identification of Technical Data
**252.227–7030 Technical Data—Withholding of Payment
FAR 52.228–7 Insurance—Liability to Third Persons Alternates I and II, if applicable)
**252.231–7000 Supplemental Cost Principles (Applies to nonprofit institutions, when allowability of costs is determined under FAR Subpart 31.2)
FAR 52.232–23 Assignment of Claims
FAR 52.232–25 Prompt Payment
FAR 52.233–1 Disputes
FAR 52.233–3 and Alternate I Protest After Award
252.235–7004 Option to Extend the Term of the Contract
252.235–7005 Contractor-Acquired Property
252.235–7006 Title to Contractor-Acquired Property
252.235–7007 Advance Payments
252.235–7008 Inspection and Acceptance
252.235–7009 Restriction on Printing
FAR 52.242–1 Notice of Intent to Disallow Costs
252.242–7001 Certification of Indirect Cost
252.242–7004 Material Management and Accounting System
**FAR 52.243–2 and Alternate V Changes—Cost-Reimbursement
FAR 52.244–2 and Alternate I Subcontracts (Cost-Reimbursement and Letter Contracts)
FAR 52.244–5 Competition in Subcontracting
FAR 52.245–5 and Alternate I Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts.)
FAR 52.247–63 Preference for U.S.-Flag Air Carriers
FAR 52.251–1 Government Supply Sources
252.251–7000 Ordering from Government Supply Sources
FAR 52.253–1 Computer Generation of Forms by the Public

(3) The following clauses should be incorporated by reference in all SFRC contracts of $100,000 or more. Clauses with a double asterisk (**) apply to nonprofit organizations only.

FAR 52.203–12 Limitation on Payments to Influence Certain Federal Transactions.
252.203–7000 Statutory Prohibitions on Compensation to Former Department of Defense Employees
FAR 52.222–2 Payment for Overtime Premiums (The word ''zero'' is inserted in the blank space indicated by an asterisk.)
FAR 52.223–2 Clean Air and Water Act (Applies if contract amount exceeds the dollar amount set forth in the preamble to the clause.)
**FAR 52.230–2 Cost Accounting Standards (If contract is not exempt under 48 CFR chapter 99 (appendix B, FAR looseleaf edition), subpart 9903.201.)
**FAR 52.230–3 Disclosure and Consistency of Cost Accounting Practices (If contract is not exempt under 48 CFR chapter 99 (appendix B, FAR looseleaf edition), subpart 9903.201.)
**FAR 52.230–5 Administration of Cost Accounting Standards (If contract is not exempt under 48 CFR chapter 99 (appendix B, FAR looseleaf edition), subpart 9903.201.)

252.231–7001 Penalties for Unallowable Costs.

252.233–7000 Certification of Claims and Requests for Adjustment or Relief.

(4) The following clauses should be incorporated by reference, if applicable.

FAR 52.215–22 Price Reduction for Defective Cost or Pricing Data

FAR 52.215–24 Subcontractor Cost or Pricing Data (Applies only if FAR 52.215–22 applies.)

FAR 52.215–27 Termination of Defined Benefit Pension Plans (Applies if certified cost and pricing data are required and cost determinations are subject to FAR Subpart 31.2.)

252.215–7000 Pricing Adjustments (Applicable if FAR 52.215–23, 24, or 25 applies.)

FAR 52.216–8 Fixed Fee (Applies in cost-plus-fixed-fee contracts.)

FAR 52.216–11 and Alternate I Cost Contract—No Fee

FAR 52.216–12 and Alternate I Cost Sharing Contract—No Fee

252.225–7000 Pricing Adjustments (Applies if FAR 52.215–23, 24, or 25 applies.)

252.225–7023 Reporting of Subcontracts (Applies only when contract action exceeds $500,000, or when any modification increases contract amount to more than $500,000.)

FAR 52.227–11 Patents Rights—Retention by the Contractor (Short Form)

252.227–7034 Patents—Subcontracts

252.227–7039 Patents—Reporting of Subject Inventions

FAR 52.232–9 Limitation on Withholding of Payments

FAR 52.232–17 Interest

FAR 52.232–20 Limitation of Cost (Applies only when contract is fully funded.)

FAR 52.232–22 Limitation of Funds (Applies only when contract is incrementally funded.)

FAR 52.232–28 Electronic Funds Transfer Payment Methods

FAR 52.246–23 Limitation of Liability

FAR 52.246–24 Limitation of Liability—High Value Items

FAR 52.246–25 Limitation of Liability—Services

FAR 52.249–5 Termination for Convenience of the Government (Educational and Other Nonprofit Institutions). (Applies if work is done on a no-profit or no-fee basis)

FAR 52.249–6 Termination (Cost Reimbursement) (Applies if work is performed on a fee or profit basis.)

FAR 52.249–14 Excusable Delays (Applies only to contracts in which FAR 52.249–6 applies.)

[56 FR 36416, July 31, 1991, as amended at 57 FR 53600, Nov. 12, 1992; 59 FR 27673, May 27, 1994; 60 FR 61598, Nov. 30, 1995]

235.016 Broad agency announcement.

To help achieve the goals of Section 1207 of Public Law 99–661 (see part 226), contracting officers shall—

(1) Whenever practicable, reserve discrete or severable areas of research interest contained in broad agency announcements for exclusive competition among historically black colleges and universities and minority institutions;

(2) Indicate such reservation—

(i) In the broad agency announcement; and

(ii) In the announcement synopsis (see 205.207(d)(v)).

235.017 Federally Funded Research and Development Centers.

(a) *Policy*.

(2) No DoD fiscal year 1992 or later funds may be obligated or expended to finance activities of a DoD Federally Funded Research and Development Center (FFRDC) if a member of its board of directors or trustees simultaneously serves on the board of directors or trustees of a profit-making company under contract to DoD, unless the FFRDC has a DoD-approved conflict of interest policy for its members (section 8107 of Pub. L. 102–172 and similar sections in subsequent Defense appropriations acts).

[58 FR 28471, May 13, 1993]

235.017–1 Sponsoring agreements.

(c)(4) DoD-sponsoring FFRDCs that function primarily as research laboratories (C3I Laboratory operated by the Institute for Defense Analysis, Lincoln Laboratory operated by Massachusetts Institute of Technology, and Software Engineering Institute) may respond to solicitations and announcements for programs which promote research, development, demonstration, or transfer of technology (Section 217, Public Law 103–337).

[60 FR 61598, Nov. 30, 1995]

235.070 Indemnification against unusually hazardous risks.

235.070–1 Indemnification under research and development contracts.

(a) Under 10 U.S.C. 2354 and if authorized by the Secretary concerned, or designee under 10 U.S.C. 2356, contracts for research and/or development may provide for indemnification of the contractor or subcontractors for—

(1) Claims by third persons (including employees) for death, bodily injury, or loss of or damage to property; and

(2) Loss of or damage to the contractor's property to the extent that the liability, loss, or damage—

(i) Results from a risk that the contract defines as ''unusually hazardous;''

(ii) Arises from the direct performance of the contract; and

(iii) Is not compensated by insurance or other means.

(b) Clearly define the specific unusually hazardous risks to be indemnified. Submit this definition for approval with the request for authorization to grant indemnification. Include the approved definition in the contract.

235.070–2 Indemnification under contracts involving both research and development and other work.

These contracts may provide for indemnification under the authority of both 10 U.S.C. 2354 and Public Law 85–804. Public Law 85–804 will apply only to work to which 10 U.S.C. 2354 does not apply. Actions under Public Law 85–804 must also comply with FAR subpart 50.4.

235.070–3 Contract clauses.

When the contractor is to be indemnified in accordance with 235.070–1, use either—

(a) The clause at 252.235–7000, Indemnification Under 10 U.S.C. 2354—Fixed Price; or

(b) The clause at 252.235–7001, Indemnification Under 10 U.S.C. 2354—Cost-Reimbursement, as appropriate.

235.071 Additional contract clauses.

(a) Use the clause at 252.235–7002, Animal Welfare, or one substantially the same, in solicitations and contracts awarded in the United States, its possessions, and Puerto Rico involving research on live vertebrate animals.

(b) Use the clause at 252.235–7003, Frequency Authorization, in solicitations and contracts for developing, producing, constructing, testing, or operating a device requiring a frequency authorization.

(c) Use the clause at 252.235–7010, Acknowledgement of Support and Disclaimer, in solicitations and contracts for research and development.

(d) Use the clause at 252.235–7011, Final Scientific or Technical Report, in solicitations and contracts for research and development.

[56 FR 36416, July 31, 1991, as amended at 60 FR 29500, June 5, 1995]

Subpart 235.70—Research and Development Streamlined Contracting Procedures—Test

SOURCE: 59 FR 52443, Oct. 18, 1994, unless otherwise noted.

235.7000 Scope.

This subpart prescribes streamlined acquisition procedures for use in support of DoD laboratories in acquiring research and development, as defined in 235.001 and FAR 35.001.

235.7001 Definitions.

As used in this subpart—

(a) *Research and development streamlined solicitation (RDSS)* means the solicitation published in the Commerce Business Daily and a supplemental package, if necessary.

(b) *Supplemental package* is part of the streamlined solicitation, if appropriate. It contains any information that is too voluminous to be included in the solicitation published in the Commerce Business Daily.

[59 FR 52443, Oct. 18, 1994, as amended at 62 FR 16100, Apr. 4, 1997]

235.7002 Applicability.

(a) The following contracting offices have been approved by the Director of Defense Procurement for participation in the test and may use the procedures of this subpart pending implementation of permanent procedures.

(1) Army: Army Materiel Command contracting offices when contracting

for Army Research Laboratory, Missile Research & Development Center, and the Medical Research & Development Command; Army Corps of Engineers contracting offices when contracting for the Waterways Experiment Station; Army Soldier Systems Command contracting office.

(2) Navy: Naval Research Laboratory contracting office; Naval Surface Warface Center contracting offices when contracting for the Carderock, Crane, Dahlgren, Indian Head and Port Hueneme divisions; Naval Undersea Warfare Center contracting office; Naval Command, Control and Ocean Surveillance Center contracting office.

(3) Air Force: Air Force Materiel Command contracting offices when contracting for Armstrong Laboratory, Phillips Laboratory, Rome Laboratory, Wright Laboratory.

(4) Defense Agencies: Armed Forces Radiobiology Research Institute contracting office, Defense Special Weapons Agency contracting office.

(b) Consider using the procedures in this subpart when the acquisition will result in a cost-reimbursement type contract that is valued at $10,000,000 or less and meets the criteria for research and development as defined in 235.001 and FAR 35.001. The procedures in this subpart shall not be used for—

(1) Contracts to be performed outside of the United States and Puerto Rico;

(2) Contracts denominated in other than U.S. dollars; or

(3) Acquisitions using simplified acquisition procedures.

(c) Do not use the procedures of this subpart to contract for ''engineering development,'' ''operational system development,'' or ''management and support'' as defined in 235.001; or for laboratory supplies and equipment, base support services, or other services identified in FAR 37.101 (a) through (h).

(d) Regardless of whether or not the RDSS is used, the contracting officer may use the research and development streamlined contracting format at 235.7006 for any acquisition that meets the criteria in 235.7002(b).

[59 FR 52443, Oct. 18, 1994, as amended at 60 FR 15690, Mar. 27, 1995; 60 FR 61598, Nov. 30, 1995; 61 FR 50454, Sept. 26, 1996; 62 FR 16100, Apr. 4, 1997]

235.7003 [Reserved]

235.7004 The research and development streamlined solicitation (RDSS).

235.7004–1 General.

The RDSS process consists of:

(a) *Synopsis.* The synopsis required by FAR 5.203(a), in addition to providing the information set forth at FAR 5.207, must advise potential offerors that a conventional solicitation will not be issued but that the solicitation will appear in a subsequent edition of the Commerce Business Daily (CBD). The synopsis must also advise potential offerors to provide address information to the office indicated in order to be included on the mailing list for any supplemental packages and/or amendments.

(b) *Solicitation.* The solicitation is published in a second CBD notice. The solicitation consists of the information listed at 235.7006(d)(A.1), including the statement of work, and incorporates by reference the appropriate terms and conditions in the format at 235.7006. FAR 5.207 limits the submissions to the CBD to 12,000 textual characters (approximately 3½ single-spaced pages).

(c) *Supplemental package.* Use a supplemental package if the solicitation must exceed 3½ single-spaced pages, or to provide forms or other printed material to potential offerors. Send the supplemental package on the date the solicitation is published in the CBD to all interested parties that provide address information.

(d) *Amendments.* Amend the RDSS as set forth at 235.7004–2(f).

[59 FR 52443, Oct. 18, 1994, as amended at 60 FR 15690, Mar. 27, 1995]

235.7004–2 Solicitation procedures.

(a) Publish the synopsis as soon as the information required by FAR 5.207 is available.

(b) Publish the solicitation no earlier than 15 days after publication of the synopsis and include, as a minimum, the information required by 235.7006(d)(A.1) and a reference to the synopsis.

(c) Send any supplemental package on the date the solicitation is published in the Commerce Business Daily,

to all interested parties that provided address information.

(d) In accordance with FAR 5.203(b), establish a due date for submission of offers that is no earlier than 45 days after publication of the synopsis.

(e) Request cost and technical proposals from all offerors. To encourage preparation of better cost proposals, consider allowing a delay between the due dates for technical and cost proposals.

(f) Amend the solicitation, if necessary, by forwarding an SF 30, Amendment of Solicitation/Modification of Contract, to all interested parties that provided address information in response to the synopsis.

(g) Post copies of all Commerce Business Daily notices in accordance with FAR 5.101(a)(2).

[59 FR 52443, Oct. 18, 1994, as amended at 60 FR 15690, Mar. 27, 1995]

235.7004–3 Proposal evaluation and contract award procedures.

(a) Evaluate proposals in accordance with FAR subpart 15.6, as supplemented by departmental procedures and this subpart.

(b) Select the proposal which offers the greatest value in terms of the evaluation factors set forth in the RDSS.

(c) Before award, require the apparent successful offeror to submit the representations and certifications set forth in 235.7006(d), Section K, Representations, Certifications and Other Statements of Offerors or Quoters.

(d) Whenever appropriate, award without discussion pursuant to FAR 52.215–16, Alternate (II).

[59 FR 52443, Oct. 18, 1994, as amended at 60 FR 15690, Mar. 27, 1995; 60 FR 61598, Nov. 30, 1995; 61 FR 7744, Feb. 29, 1996]

235.7005 The research and development streamlined contract (RDSC).

The RDSC is the streamlined contract that results from the use of the RDSS or other solicitation procedures that meet the criteria for use of the RDSS. Include the following in RDSCs:

(a) Standard Form (SF) 33, Solicitation, Offer and Award, or SF 26, Award/Contract;

(b) Sections B through J of the RDSS or other solicitation, with applicable fill-ins completed and clause dates added.

[59 FR 52443, Oct. 18, 1994, as amended at 62 FR 16100, Apr. 4, 1997]

235.7006 The research and development streamlined contracting format.

(a) The clauses and provisions prescribed in the exhibit to paragraph (d) of this section are mandatory unless they are marked with an asterisk. Terms, clauses and provisions marked with an asterisk are for use as appropriate as prescribed elsewhere in FAR and DFARS. List in the solicitation published in the Commerce Business Daily (see paragraph (d)(A.1)(v) of this section) the numbers of any asterisked terms, clauses, and provisions that apply to the acquisition, and the text of any special provisions, instructions, or notices that are approved for use in the solicitation.

(b) At the time of contract award to educational or nonprofit institutions, delete those clauses and provisions that do not apply to such institutions, and, as necessary, replace with the appropriate alternatives. For example, FAR 52.203–10 will be included in all solicitations, but deleted in awards to educational institutions.

(c) The use of FAR and DFARS provisions and clauses, and nonstandard provisions and clauses approved for agency use, that are not in the research and development streamlined contract format provided by the Exhibit in this section, shall be approved in accordance with agency procedures.

(d) The research and development streamlined contract format is set forth in the following exhibit:

EXHIBIT—RESEARCH AND DEVELOPMENT STREAMLINED CONTRACT FORMAT

Part I—The Schedule

Section A, Solicitation/Contract Form

(A.1) Research and development streamlined solicitation (RDSS). Include the following in the RDSS:

(i) Solicitation number;

(ii) A statement that award will be made in accordance with DFARS Subpart 235.70, Research and Development Streamlined Contracting Procedures;

(iii) A statement as to whether the RDSS includes a supplemental package;

(iv) Instructions for obtaining any supplemental package, including use of Electronic Bulletin Boards, as appropriate;

(v) A statement that all of the mandatory terms, clauses, and provisions, and certain asterisked terms, clauses, and provisions in DFARS 235.7006 are incorporated by reference. This statement must list the asterisked terms, clauses, and provisions that apply. (For example: ''All of the mandatory terms, clauses, and provisions at DFARS 235.7006, Research and development streamlined contract format, and the following items listed therein for use as applicable are incorporated by reference: B.4, B.5, C.1, E.3, I.80.'') Additions to and deletions from the clauses and provisions listed in the standard format, and data required to be inserted in blanks in clauses or solicitation provisions, when known at the time the solicitation is published, must be clearly annotated in the RDSS;

(vi) A statement that the clauses and provisions are those in effect through FAC _____, DAC _____, and Departmental Letter No. _____;

(vii) A statement that the standard evaluation factors at Section M of this subpart apply, or, if they do not apply, the applicable evaluation factors. If the standard evaluation factors are modified in any way, the modifications must be clearly expressed so that the result is unambiguous. Additions to and deletions from Section M must be clearly annotated in the RDSS;

(viii) Identification of data requirements by including either:

(A) A summary of the data requirements that identifies all deliverable data items, and specifies number of copies and frequency of delivery; or

(B) A notice that DD Form 1423, Contract Data Requirements List, is included in the supplemental package;

(ix) Type of cost contract contemplated;

(x) Estimated period of performance;

(xi) Notice of preproposal conference, if applicable, with location, date, and time;

(xii) Notice of small business or other set-aside, if applicable;

(xiii) Notice of place, date, and time technical and cost proposals are due;

(xiv) Number of copies of technical and cost proposals required;

(xv) Proposal page limitations;

(xvi) Whether multiple awards are contemplated;

(xvii) Name, address, and telephone number of contracting officer;

(xviii) Any applicable Commerce Business Daily numbered notes;

(xix) Statement that a DD Form 254, Contract Security Classification Specification, will be included in the supplemental package, if appropriate;

(xx) The statement of work, or a statement that the statement of work is in the supplemental package; and

(xxi) The applicable Standard Industrial Classification (SIC) code and small business size standard.

(A.2) Research and development streamlined contract (RDSC). Use either Standard Form (SF) 33, Solicitation, Offer and Award, or SF 26, Award/Contract.

Section B, Supplies or Services and Prices/Costs

(Use appropriate CLIN structure. Include item descriptions.)

(B.1) Type of Contract.

This is a _____ Contract.

*(B.2) Estimated Cost. (Use when no fee will be paid)

The total estimated cost for this contract is $_____

*(B.3) Cost-Plus-Fixed-Fee. (Applicable to fee-bearing contracts)

The total estimated cost for this contract is $_____

The total fixed fee for this contract is $ _____

*(B.4) Award Fee. (Applicable to award fee-type contracts)

In addition to the fee set forth elsewhere in the contract, the Contractor may earn an award fee up to $_____ on the basis of performance during the performance periods, and in the amount specified in the award fee plan.

(i) Monitoring of performance. The contractor's performance will be monitored continually by the Award Fee Review Board.

(ii) Award fee plan. This plan provides necessary administrative information, including the evaluation criteria and schedule, for the purpose of implementing the award fee provision. Upon contract award, the Contractor will be provided the award fee plan subject to any withholding authorized by the _____ (insert appropriate contracting official).

(iii) Modification of award fee plan. Before the start of an evaluation period, the Government may unilaterally—

(A) Modify the award fee performance evaluation criteria and areas applicable to the evaluation period; and

(B) Redistribute the remaining award fee dollars among the remaining periods. The Contracting Officer will notify the Contractor in writing of the changes and modify the award fee plan accordingly.

(iv) The following standards of performance shall be used in determining whether and to what extent the Contractor has earned or may be entitled to receive any award fee:

(A) Excellent performance: Contractor performance of virtually all contract task requirements is uniformly well above standard and exceeds the standard by a substantial

margin in numerous significant tangible or intangible benefits to the Government (i.e., improved quality, responsiveness, increased timeliness, or generally enhanced effectiveness of operations). There are few areas for improvement; these areas are all minor; there are no recurring problems; and management has initiated effective corrective action whenever needed.

(B) Very good performance: The contractor's performance of most contract task requirements is uniformly well above standard and exceeds the standard in many significant areas. Although some areas may require improvements these are minor and are more than offset by better performance in other areas. Few, if any, recurring deficiencies have been noted in the Contractor's performance and the contractor has demonstrated/taken satisfactory corrective action. Innovative management actions have resulted intangible or in tangible benefits to the Government (i.e., improved quality, responsiveness, increased quantity, increased timeliness, or generally enhanced effectiveness of operations).

(C) Good performance: Contractor's performance of most contract task requirements meets the standard, and it exceeds the standard in several significant areas. While the remainder of the contractor's effort generally meets contract requirements, areas requiring improvement are more than offset by better performance in other areas. Management actions taken or initiated have resulted in some demonstrated benefits to the Government (i.e., improved quality, responsiveness, timeliness, or effectiveness of operations).

(D) Marginal performance: Contractor performance meets most contract standards. Although there are areas of good or better performance, these are more or less offset by lower rated performance in other areas. Little additional tangible benefit is observable due to contractor effort or initiative.

(E) Submarginal performance: Contractor performance is below standard in several areas. Contractor performance in accordance with requirements is inconsistent. Quality, responsiveness, timeliness, and/or economy in many areas require attention and action. Corrective actions have not been taken, or are ineffective. Overall submarginal performance shall not be given award fee.

(v) Maximum payable award fee. The maximum payable award fee in any evaluation period shall be determined based on the amount set forth in the applicable contract line items and a percentage based on the Government's evaluation of the Contractor's performance as follows:

Performance	Percent of maximum award fee payable
Excellent	__% to __%
Very Good	__% to __%
Good	__% to __%
Marginal	__% to __%
Submarginal	0%

(vi) Self-evaluation. The Contractor may submit to the Contracting Officer within five working days after the end of each award fee evaluation period, a brief written self-evaluation of its performance for the period. This statement may contain information which may be used to assist the Award Fee Review Board in its evaluation of the Contractor's performance during the period.

(vii) Disputes. The decision of the Fee Determining Official on the amount of award fee will not be subject to the ''Disputes'' clause.

(viii) Award fee payment.

(A) As determined by the Fee Determining Official, payment of any award fee will not be subject to the ''Allowable Cost and Payment'' and ''Termination (Cost Reimbursement)'' clauses of this contract.

(B) The Contractor may submit vouchers for the award fee immediately upon receipt of the Contracting Officer's written award fee notification.

*(B.5) Target Cost and Fee. (Applicable to incentive fee-type contracts. The following information shall be inserted into the appropriate blanks in clause I.54.) The target cost is $_____.

The target fee is $_____.

The minimum fee the contractor may receive is $_____.

The maximum fee the contractor may receive is $_____.

Share ratio:_____.
(Government/Contractor)

*(B.6) Payment of Fixed Fee on Cost-Plus-Fixed-Fee (Completion) Contracts. The fixed fee shall be paid in monthly installments based upon the percentage of completion of work as determined by the Administrative Contracting Officer, subject to the withholding provisions of the contract.

*(B.7) Payment of Fixed Fee on Cost-Plus-Fixed-Fee (Term) Contracts. (Applicable to cost-plus-fixed-fee (term) contracts when the clause at FAR 52.216–8 is used.) Pursuant to the clause at FAR 52.216–8, Fixed Fee, and subject to withholding provisions contained in that clause or elsewhere in this contract, fixed fee shall be paid to the Contractor based upon the percentage of hours completed as related to the total hours set forth in the contract on each voucher. The Contractor shall certify to the level of effort expended during that period. The Government technical representative shall sign a statement on the certificate that the work performed during the period has been performed satisfactorily.

*(B.8) Options. (Applicable to contracts with options) The Government may require performance of the work required by CLIN _____. The Contracting Officer shall provide written notice of intent to exercise this option to the Contractor on or before _____. If the Government exercises this option by _____, the Contractor shall perform at the estimated cost and fee, if applicable, set forth as follows:

Estimated Cost	$_____
OR	
Estimated Cost	$_____
Fixed Fee	$_____
Total	$_____
OR	
Estimated Cost	$_____
Base Fee	$_____
Maximum Award Fee	$_____
Total	$_____
OR	
Target Cost	$_____
Minimum Fee	$_____
Target Fee	$_____
Maximum Fee	$_____
Share Ratio	$_____

Section C, Description/Specifications/Work Statements

*(C.1) Classified Work Statement. (Applicable if Section C is classified.) The description/specifications/work statement entitled, ''_____,'' classified _____, dated _____, is incorporated herein by reference. A copy may be obtained from the Contracting Officer, if a need-to-know is established and appropriate security clearance has been granted.

*(C.2) Unclassified Work Statement. (Applicable if Section C is unclassified and is attached to the contract.) The description/specifications/work statement is included as Attachment _____.

*(C.3) Contractor's Technical Proposal. (Applicable if portions of the Contractor's proposal are incorporated by reference. Include only those portions of the proposal that specifically describe the work to be performed.) The Contractor's proposal entitled, ''_____,'' pages _____, dated _____, is incorporated herein by reference.

Section D, Packing and Marking

(D.1) Commercial Packaging.

Preservation, packaging, and packing shall provide adequate protection against physical damage during shipment for all deliverable items in accordance with standard commercial practices.

Section E, Inspection and Acceptance

(1) Federal Acquisition Regulation clauses:

*(E.1)	52.246–8	Inspection of Research and Development—Cost Reimbursement.
*(E.2)	52.246–8	Inspection of Research and Development—Cost Reimbursement (Alternate I).
*(E.3)	52.246–9	Inspection of Research and Development (Short Form).

(2) Defense Federal Acquisition Regulation Supplement clauses.

*(E.4)	252.246–7000	Material Inspection and Receiving Report.

(3) Other provisions.

(E.5) Inspection and Acceptance.

Inspection and acceptance of any and all deliverables under this contract will be accomplished by the contracting officer or a designated representative.

Section F, Deliveries or Performance

*(F.1) FAR 52.242–15 Stop Work Order—Alternate I.

(F.2) Delivery of Reports.

(i) All data shall be delivered in accordance with the delivery schedule shown on the Contract Data Requirements List, attachments, or as incorporated by reference.

(ii) All reports and correspondence submitted under this contract shall include the contract number and project number and be forwarded prepaid. A copy of the letters of transmittal shall be delivered to the Procuring Contracting Officer (PCO) and the Administrative Contracting Officer (ACO). The addresses are set forth on the contract award cover page. All other address(es) and code(s) for consignee(s) are as set forth in the contract or incorporated by reference.

*(F.3) FAR 52.247–55 F.O.B. Point of Delivery for Government-Furnished Property.

*(F.4) The work under this contract shall commence on _____ and be completed no later than _____.

Section G, Contract Administration Data

*(G.1) Contractor Payment Address. (To be filled in at time of contract award. Applicable if the Contractor has specified a payment address other than the address shown on the cover page of the contract.)

Contractor Payment Address:

_____

_____

_____

*(G.2) Incremental Funding. (Applicable to incrementally funded contracts.) This contract is incrementally funded pursuant to the Limitation of Funds clause, FAR 52.232–22. Funds are hereby obligated in the amount of $_____ and it is estimated that they are sufficient for contract performance through _____.

*(G.3) Incremental Funding. (Applicable to incrementally funded contracts.) This contract is incrementally funded pursuant to the Limitation of Funds clause, FAR 52.232–22. Funds are hereby obligated in the amount of $_____ and it is estimated that they are sufficient for contract performance through _____. Additional incremental funding planned, but not obligated, is:

(Insert funding schedule.)

*(G.4) Request for Equal Opportunity Preaward Clearance of Subcontracts. (Applicable to subcontracts over $1 million.) To provide the Contracting Officer with adequate time to process the Contractor's request for preaward clearance of subcontracts as required by FAR 52.222–28, the prime contractor shall request preaward clearance through the Contracting Officer at least 30 calendar days before the proposed award date, unless the cognizant Department of Labor Compliance Office agrees to a shorter time.

*(G.5) Contracting Officer's Representative. (To be filled in at time of contract award.) The Contracting Officer's representative for this contract is:

_____

_____

_____

*(G.6) Invoice Instructions. (Insert invoice instructions.)

(G.7) Accounting and Appropriation Data (Insert accounting and appropriation data.)

Section H, Special Contract Requirements

(H.1) Incorporation of Section K by Reference. Pursuant to Federal Acquisition Regulation (FAR) 15.406–1(b), Section K of the solicitation is hereby incorporated by reference.

*(H.2) Rent-Free Use of Government Property. The Contractor may use on a rent-free, noninterference basis, as necessary for the performance of this contract, the Government property accountable under contract(s) _____. The Contractor is responsible for scheduling the use of all property covered by the above referenced contract(s) and the Government shall not be responsible for conflicts, delays, or disruptions to any work performed by the Contractor due to use of any or all such property under this contract or any other contracts under which use of such property is authorized.

*(H.3) Government-Furnished Property. The Government will furnish to the Contractor for use in the performance of the contract on a rent-free basis the Government-owned property listed in an attachment to this contract, subject to the provisions of the Government Property Clause of the Contract Clauses.

(H.4) Scientific/Technical Information. If not already registered, the Contractor is encouraged to register for Defense Technical Information Center (DTIC) service by contacting the following:

Defense Technical Information Center, Attn: Registration Section (DTIC–BCS), 8725 John J. Kingman Road, Suite 0944, Fort Belvoir, VA 22060–0944, (703) 767–8273 or 1–800–CAL–DTIC (225–3842), menu selection 2.

To avoid duplication of effort and conserve scientific and technical resources, the Contractor is encouraged to search existing sources in DTIC to determine the current state of the art concepts, studies, etc.

(H.5) Reserved.

*(H.6) (Insert nonstandard clause(s) approved in accordance with agency procedures, if applicable.)

Part II—Contract Clauses

Section I, Contract Clauses

(I.1)	52.252–2	Clauses Incorporated by Reference.
(I.2)	52.202–1	Definitions.
(I.3)	(1)	
(I.4)	52.203–3	Gratuities.
(I.5)	52.203–5	Covenant Against Contingent Fees.
(I.6)	52.203–7	Anti-Kickback Procedures.
(I.7)	52.203–10	Price or Fee Adjustment for Illegal or Improper Activity.
(I.8)	52.209–6	Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.
(I.9)	(1)	

(I.10)	(1)	
(I.11)	(1)	
(I.12)	52.215–26	Integrity of Unit Prices.
(I.13)	52.215–33	Order of Precedence.
(I.14)	52.216–7	Allowable Cost and Payment (Modified in accordance with 16.307 as applicable).
(I.15)	(1)	
(I.16)	(1)	
(I.17)	(1)	
(I.18)	(1)	
(I.19)	52.222–3	Convict Labor.
(I.20)	52.222–26	Equal Opportunity.
(I.21)	52.222–35	Affirmative Action for Special Disabled and Vietnam Era Veterans.
(I.22)	52.222–36	Affirmative Action for Handicapped Workers.
(I.23)	52.222–37	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era.
(I.24)	52.223–6	Drug-Free Workplace.
(I.25)	52.225–11	Restrictions on Certain Foreign Purchases.
(I.26)	52.227–1	Authorization and Consent—Alternate I.
(I.27)	52.227–2	Notice and Assistance Regarding Patent and Copyright Infringement.
(I.28)	52.228–7	Insurance—Liability to Third Persons.
(I.29)	52.232–9	Limitation on Withholding of Payments.
(I.30)	52.232–23	Assignment of Claims.
(I.31)	52.232–25	Prompt Payment.
(I.32)	(1)	
(I.33)	52.233–1	Disputes.
(I.34)	52.233–3	Protest After Award—Alternate I.
(I.35)	52.242–1	Notice of Intent to Disallow Costs.
(I.36)	52.242–13	Bankruptcy.
(I.37)	52.244–2	Subcontracts (Cost-Reimbursement and Letter Contracts) Alternate I.
(I.38)	52.244–5	Competition in Subcontracting.
(I.39)	52.247–1	Commercial Bill of Lading Notations.
(I.40)	52.249–14	Excusable Delays.
(I.41)	52.253–1	Computer-Generated Forms.
(I.42)	(1)	
(I.43)	(1)	
*(I.44)	52.204–2	Security Requirements.
*(I.45)	52.204–2	Security Requirements—Alternate I (For educational institutions).
*(I.46)	52.215–22	Price Reduction for Defective Cost or Pricing Data.
*(I.47)	52.215–23	Price Reduction for Defective Cost or Pricing Data-Modifications.
*(I.48)	52.215–24	Subcontractor Cost or Pricing Data.
*(I.49)	52.215–25	Subcontractor Cost or Pricing Data-Modifications.
*(I.50)	52.215–27	Termination of Defined Benefit Pension Plans (Except educational institutions).
*(I.51)	52.215–31	Waiver of Facilities Capital Cost of Money (Except educational institutions).
*(I.52)	52.215–39	Reversion or Adjustment of Plans for Postretirement Benefits Other than Pension (PRB).
*(I.53)	52.216–8	Fixed Fee.
*(I.54)	52.216–10	Incentive Fee.
*(I.55)	52.216–11	Cost Contract—No Fee.
*(I.56)	52.216–11	Cost Contact-No Fee—Alternate I.
*(I.57)	52.216–12	Cost-Sharing Contract-No Fee.
*(I.58)	52.216–12	Cost-Sharing Contract-No Fee—Alternate I.
*(I.59)	52.216–15	Predetermined Indirect Cost Rates (For educational institutions only).
*(I.59A)	52.216–7002	Alternate A (For educational institutions only).
*(I.60)	52.219–6	Notice of Total Small Business Set-Aside.
*(I.61)	52.219–6	Notice of Total Small Business Set-Aside—Alternate I.
(I.62)	(1)	
*(I.63)	(1)	
*(I.64)	52.219–14	Limitations on Subcontracting.

*(I.65)	52.219–16	Liquidated Damages-Small Business Subcontracting Plan.
*(I.66)	(1)	
*(I.67)	52.222–1	Notice to the Government of Labor Disputes.
*(I.68)	52.222–2	Payment for Overtime Premiums (Insert applicable information in paragraph (a)).
*(I.69)	52.222–28	Equal Opportunity Preaward Clearance of Subcontracts.
*(I.70)	52.223–2	Clean Air and Water.
*(I.71)	52.223–3	Hazardous Material Identification and Material Safety Data.
*(I.72)	52.223–7	Notice of Radioactive Materials (Insert in paragraph (a): *21*).
*(I.73)	52.226–1	Utilization of Indian Organizations and Indian-Owned Economic Enterprises.
*(I.74)	52.227–10	Filing of Patent Applications-Classified Subject Matter.
*(I.75)	52.227–11	Patent Rights-Retention by the Contractor (Short Form).
*(I.76)	52.227–12	Patent Rights-Retention by the Contractor (Long Form).
*(I.77)	52.227–13	Patent Rights-Acquisition by the Government.
(I.78)	(1)	
(I.79)	(1)	
*(I.80)	52.229–8	Taxes—Foreign Cost-Reimbursement Contracts.
*(I.81)	52.229–10	State of New Mexico Gross Receipts and Compensating Tax (Insert applicable information in paragraph (c)).
*(I.82)	52.230–2	Cost Accounting Standards (Except if exempted).
*(I.83)	52.230–3	Disclosure and Consistency of Cost Accounting Practices (Except if exempted).
*(I.84)	52.230–6	Administration of Cost Accounting Standards (Except educational institutions).
*(I.85)	52.232–17	Interest.
*(I.86)	52.232–20	Limitation of Cost.
*(I.87)	52.232–22	Limitation of Funds.
*(I.88)	52.232–23	Assignment of Claims-Alternate I.
*(I.89)	52.233–1	Disputes-Alternate I.
*(I.90)	52.237–2	Protection of Government Buildings, Equipment and Vegetation.
*(I.91)	52.242–10	F.O.B. Origin-Government Bills of Lading or Prepaid Postage.
*(I.92)	52.242–11	F.O.B. Origin-Government Bills of Lading or Indicia Mail.
*(I.93)	52.242–12	Report of Shipment (REPSHIP).
*(I.94)	52.243–2	Changes—Cost-Reimbursement-Alternate V.
*(I.95)	52.243–6	Change Order Accounting.
*(I.96)	52.243–7	Notification of Changes (30 Calendar Days).
*(I.97)	52.245–5	Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts).
*(I.98)	52.245–5	Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts)-Alternate I (For educational institutions and nonprofit organizations).
*(I.99)	52.245–19	Government Property Furnished ''As Is''.
*(I.100)	52.246–23	Limitation of Liability.
*(I.101)	52.246–24	Limitation of Liability-High Value Items.
*(I.102)	52.246–24	Limitation of Liability-High Value Items-Alternate I.
*(I.103)	52.246–25	Limitation of Liability-Services.
*(I.104)	52.247–63	Preference for U.S.-Flag Air Carriers.
*(I.105)	52.247–66	Returnable Cylinder.
*(I.106)	52.249–5	Termination for Convenience of the Government (Educational and Other Nonprofit Institutions).
*(I.107)	52.249–6	Termination (Cost-Reimbursement).
*(I.108)	52.251–1	Government Supply Sources.
(I.109)	252.201–7000	Contracting Officer's Representative.
(I.110)	252.203–7001	Special Prohibition on Employment.
(I.111)	(1)	
(I.112)	(1)	
(I.113)	252.204–7003	Control of Government Personnel Work Product.
(I.114)	252.209–7000	Acquisitions from Subcontractors Subject to On-Site Inspection under the Intermediate-Range Nuclear Forces (INF) Treaty.
(I.115)	252.225–7012	Preference for Certain Domestic Commodities.
(I.116)	252.225–7031	Secondary Arab Boycott of Israel.
(I.117)	(1)	
(I.118)	(1)	
(I.119)	(1)	

(I.120)	252.227–7030	Technical Data-Withholding of Payment.
(I.121)	252.227–7037	Validation of Restrictive Markings on Technical Data.
(I.122)	252.231–7000	Supplemental Cost Principles.
(I.123)	252.232–7006	Reduction or Suspension of Contract Payments Upon Finding of Fraud.
(I.124)	252.242–7000	Postaward Conference.
(I.125)	(1)	
(I.126)	252.247–7023	Transportation of Supplies by Sea.
*(I.127)	(1)	
*(I.128)	252.203–7002	Display of DoD Hotline Poster.
*(I.129)	252.204–7000	Disclosure of Information.
*(I.130)	252.204–7002	Payment for Subline Items Not Separately Priced.
*(I.131)	252.205–7000	Provision of Information to Cooperative Agreement Holders.
*(I.132)	252.215–7000	Pricing Adjustments.
*(I.133)	252.215–7002	Cost Estimating System Requirements.
*(I.134)	252.219–7001	Notice of Partial Small Business Set-Aside with Preferential Consideration for Small Disadvantaged Business Concerns.
*(I.134A)	252.219–7001	Notice of Partial Small Business Set-Aside with Preferential Consideration for Small Disadvantaged Business Concerns, Alternate I.
*(I.135)	252.219–7002	Notice of Small Disadvantaged Business Set-Aside.
*(I.135A)	252.219–7002	Notice of Small Disadvantaged Business Set-Aside, Alternate I.
*(I.136)	252.219–7003	Small Business and Small Disadvantaged Business Subcontracting Plan (DoD Contracts).
*(I.137)	252.219–7004	Small Business and Small Disadvantaged Business Subcontracting Plan (Test Program).
*(I.138)	252.219–7005	Incentive for Subcontracting with Small Businesses, Small Disadvantaged Businesses, Historically Black Colleges and Universities and Minority Institutions (. . . To be negotiated ___%).
*(I.139)	252.219–7005	Incentive for Subcontracting with Small Businesses, Small Disadvantaged Businesses, Historically Black Colleges and Universities and Minority Institutions—ALTERNATE I (. . . To be negotiated ___%).
*(I.140)	252.219–7006	Notice of Evaluation Preference for Small Disadvantaged Business Concerns.
*(I.141)	252.223–7001	Hazard Warning Labels.
*(I.142)	252.223–7002	Safety Precautions for Ammunitions and Explosives.
*(I.143)	252.223–7003	Change in Place of Performance—Ammunition and Explosives.
*(I.144)	252.223–7004	Drug-Free Work Force.
*(I.145)	252.225–7014	Preference for Domestic Specialty Metals.
*(I.146)	252.225–7016	Restriction on Acquisition of Ball and Roller Bearings.
*(I.147)	252.225–7025	Foreign Source Restrictions.
*(I.148)	252.225–7026	Reporting of Contract Performance Outside the United States.
*(I.149)	252.225–7032	Waiver of United Kingdom Levies.
*(I.150)	252.226–7000	Notice of Historically Black College or University and Minority Institution Set-Aside.
*(I.151)	252.227–7026	Deferred Delivery of Technical Data or Computer Software.
*(I.152)	252.227–7027	Deferred Ordering of Technical Data or Computer Software.
*(I.153)	(1)	
*(I.154)	252.227–7034	Patent—Subcontracts.
(I.155)	252.227–7036	Declaration of Technical Data Conformity.
*(I.156)	252.227–7039	Patents—Reporting of Subject Inventions.
*(I.157)	(1)	
*(I.158)	252.232–7000	Advance Payment Pool (For educational institutions and nonprofit organizations).
*(I.159)	(1)	
*(I.160)	252.235–7002	Animal Welfare.
*(I.161)	252.242–7002	Submission of Commercial Freight Bills for Audit.
*(I.162)	252.242–7003	Application for U.S. Government Shipping. Documentation/Instructions.
*(I.163)	252.242–7004	Material Management and Accounting System.
*(I.164)	252.245–7001	Reports of Government Property.
*(I.165)	252.247–7024	Notification of Transportation of Supplies by Sea.

*(I.166)	*Reserved*	
*(I.167)	252.251–7000	Ordering From Government Supply Sources.
*(I.168)	252.223–7006	Prohibition on Disposal of Toxic and Hazardous Materials.
*(I.169)	252.249–7002	Notification of Anticipated Contract Termination or Reduction.
(I.170)	52.204–4	Printing/Copying Double-Sided on Recycled Paper.
*(I.171)	52.208–8	Helium Requirement Forecast and Required Sources for Helium.
(I.172)	52.215–2	Audit and Records—Negotiation.
*(I.173)	52.215–2	Audit and Records—Negotiation, Alternate II.
(I.174)	52.215–40	Notification of Ownership Changes.
*(I.175)	52.215–42	Requirements for Cost or Pricing Data or Information. Other Than Cost or Pricing Data—Modifications.
*(I.176)	52.215–42	Requirements for Cost or Pricing Data or Information. Other Than Cost or Pricing Data—Modifications, Alternate II.
*(I.177)	52.215–42	Requirements for Cost or Pricing Data or Information. Other Than Cost or Pricing Data—Modifications, Alternate III.
(I.178)	52.219–8	Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns.
*(I.179)	52.219–9	Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan.
*(I.179A)	52.219–9	Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan—Alternate II.
*(I.180)	52.242–3	Penalties for Unallowable Costs.
(I.181)	52.242–4	Certification of Indirect Costs.
(I.182)	52.244–6	Subcontracts for Commercial Items and Commercial Components.
*(I.183)	52.247–67	Submission of Commercial Transportation Bills to the General Services Administration for Audit.
(I.184)	52.223–14	Toxic Chemical Release Reporting.
(I.185)	252.235–7010	Acknowledgement of Support and Disclaimer.
(I.186)	252.235–7011	Final Scientific or Technical Report.
*(I.187)	252.227–7013	Rights in Technical Data—Noncommercial Items.
*(I.188)	252.227–7013	Rights in Technical Data—Noncommercial Items, Alternate I.
*(I.189)	252.227–7014	Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation.
*(I.190)	252.227–7014	Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation—Alternate I.
*(I.191)	252.227–7015	Technical Data—Commercial Items.
(I.192)	252.227–7016	Rights in Bid or Proposal Information.
*(I.193)	252.227–7018	Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research Program.
*(I.194)	252.227–7018	Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research Program, Alternate I.
*(I.195)	252.227–7019	Validation of Asserted Restrictions—Computer Software.
*(I.196)	252.227–7025	Limitations on the Use or Disclosure of Government-Furnished Information Marked With Restrictive Legends.
*(I.197)	252.209–7005	Military Recruiting on Campus (For educational institutions only).
(I.198)	52.203–6	Restrictions on Subcontractor Sales to the Government.
(I.199)	52.203–8	Cancellation, Recission, and Recovery of Funds for Illegal or Improper Activity.
(I.200)	52.203–12	Limitation on Payments to Influence Certain Federal Transactions.
*(I.201)	52.211–15	Defense Priority and Allocation Requirements.
*(I.202)	52.215–42	Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications, Alternative IV.
*(I.203)	52.230–5	Cost Accounting Standards—Educational Institution.
*(I.204)	52.232–18	Availability of Funds.
(I.205)	52.232–33	Mandatory Information for Electronic Funds Transfer Payment.
*(I.206)	52.245–18	Special Test Equipment.
*(I.207)	52.252–6	Authorized Deviations in Clauses.
*(I.208)	252.209–7004	Reporting of Commercial Transactions with the Government of a Terrorist Country.

*(I.209)	252.223–7007	Safeguarding Sensitive Conventional Arms, Ammunition and Explosives.
*(I.210)	252.223–11	Ozone-Depleting Substances.
*(I.211)	252.243–7002	Certification of Requests for Equitable Adjustment

[1] Reserved.

Part III—List of Documents, Exhibits, and Other Attachments

Section J, List of Attachments

Use attachments and exhibits to inform the contractor of local information such as:

(1) Procedures for laboratory access;

(2) Laboratory hours of operation;

(3) Special procedures related to unique laboratory working environments which are not covered by FAR or DFARS; and

(4) Base support or government property information.

*(J.1) List of Attachments:

*(J.2) List of Exhibits:

Part IV—Representations and Instructions

Section K, Representations, Certifications and Other Statements of Offerors or Quoters

The following solicitation provisions require representations, certifications, or the submission of other information by offerors. They are mandatory, and are included by reference. Full text copies of these provisions are available from the Contracting Officer and must be completed before contract award.

(K.1)	([1])	
(K.2)	([1])	
(K.3)	52.203–11	Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.
(K.4)	52.204–3	Taxpayer Identification.
(K.5)	52.209–5	Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.
(K.6)	52.215–6	Type of Business Organization.
(K.7)	52.215–11	Authorized Negotiators.
(K.8)	52.215–20	Place of Performance.
(K.9)	([1])	
(K.10)	([1])	
(K.11)	([1])	
(K.12)	([1])	
(K.13)	52.222–21	Certification of Nonsegregated Facilities.
(K.14)	52.222–22	Previous Contracts and Compliance Reports.
(K.15)	52.222–25	Affirmative Action Compliance.
(K.16)	52.223–1	Clean Air and Water Certification.
(K.17)	([1])	
(K.18)	52.227–6	Royalty Information.
(K.19)	52.230–1	Cost Accounting Standards Notices and Certification.
(K.20)	([1])	
(K.21)	252.209–7002	Disclosure of Ownership or Control by a Foreign Government.
(K.22)	252.219–7000	Small Disadvantaged Business Concern Representation (DoD Contracts).
(K.23)	([1])	
(K.24)	([1])	
(K.25)	252.226–7001	Historically Black College or University and Minority Institution Status.
(K.26)	([1])	
(K.27)	252.247–7022	Representation of Extent of Transportation by Sea.
(K.28)	52.204–5	Women-Owned Business.
(K.29)	([1])	
(K.30)	52.219–1	Small Business Program Representation.
(K.31)	52.223–13	Certification of Toxic Chemical Release Reporting.
(K.32)	252.209–7001	Disclosure of Ownership or Control by the Government of a Terrorist Country.
(K.33)	252.209–7003	Disclosure of Commercial Transactions with the Government of a Terrorist Country.
(K.34)	252.209–7004	Reporting of Commercial Transactions with the Government of a Terrorist Country.

(K.35)	(1)	
(K.36)	(1)	
(K.37)	52.226–2	Historically Black College or University and Minority Institution Representation.
		Section L. Instructions, Conditions, and Notices to Offerors or Quoters
(L.1)	52.252–1	Solicitation Provisions Incorporated by Reference.
(L.2)	(1)	
(L.3)	52.211–2	Availability of Specifications and Standards Listed in the DoD Index of Specifications and Standards (DODISS).
(L.4)	52.215–5	Solicitation Definitions.
(L.5)	52.215–7	Unnecessarily Elaborate Proposals or Quotations.
(L.6)	52.215–8	Amendments to Solicitations.
(L.7)	52.215–9	Submission of Offers.
(L.8)	52.215–10	Late Submissions, Modifications, and Withdrawals of Proposals.
(L.9)	52.215–12	Restriction on Disclosure and Use of Data.
(L.10)	52.215–13	Preparation of Offers.
(L.11)	52.215–14	Explanation to Prospective Offerors.
(L.12)	52.215–15	Failure to Submit Offer.
(L.13)	52.215–16	Contract Award.
*(L.14)	(1)	
(L.15)	52.216–1	Type of Contract (See 235.7006(d)(B.1)).
(L.16)	52.222–24	Preaward On-Site Equal Opportunity Compliance Review.
(L.17)	(1)	
(L.18)	52.233–2	Service of Protest (See 235.7006(d)(A.1)(xvii)).
*(L.19)	52.237–1	Site Visit.
(L.20)	52.252–5	Authorized Deviations in Provisions.
(L.21)	252.204–7001	Commercial and Government Entity (CAGE) Code Reporting.
(L.22)	(1)	
(L.23)	52.215–16	Contract Award—Alternate II.
*(L.24)	52.215–41	Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data.
*(L.25)	52.215–41	Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data, Alternate I.
*(L.26)	52.215–41	Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data, Alternate II.
*(L.27)	52.215–41	Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data, Alternate III.
*(L.28)	52.215–41	Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data, Alternate IV.
(L.29)	252.227–7017	Identification and Assertion of Use, Release, or Disclosure Restrictions.
(L.30)	252.227–7028	Technical Data or Computer Software Previously Delivered to the Government.
*(L.31)	52.215–30	Facilities Capital Cost of Money (Except educational institutions).
(L.32)	52.204–6	Contractor Identification Number—Data Universal Numbering System (DUNS) Number.
*(L.33)	52.211–14	Notice of Priority Rating for National Defense Use.

(L.34 through L.99) Reserved.

*(L.100) (Insert special instructions, conditions, or notices to offerors, if applicable).

(L.101) Government-Furnished Property.

No material, labor, or facilities will be furnished by the Government unless provided for in the solicitation.

(L.102) Proposal Preparation and Submission Instructions.

(i) Page limitation, format.

(A) A proposal shall be prepared in separate volumes with the page limit and number of copies specified as follows. The table of contents and tabs are exempt from the page limits. No cross-referencing between volumes for essential information is permitted except where specifically set forth herein. The following volumes of material will be submitted:

Title	Copies	Maximum page limits
Cost	As specified in solicitation summary.	*50
Technical	As specified in solicitation summary.	100

*The 50-page cost proposal is a goal not a limit. The Contractor may use additional pages if necessary to comply with public law.

(B) Any technical proposal pages submitted that exceed the page limitations set forth in paragraph (i)(A) of this subsection L.102 will not be read or evaluated. Proposal pages failing to meet the format in paragraph (i)(D) of this subsection L.102 will not be read or evaluated.

(C) No program cost data or cross-reference to the cost proposal will be included in any other volume.

(D) Format of the proposal volumes shall be as follows:

(1) Proposals will be prepared on 8½ x 11 inch paper except for foldouts used for charts, tables, or diagrams, which may not exceed 11 x 17 inches. Foldouts will not be used for text. Pages will have a one inch margin.

(2) A page is defined as one face of a sheet of paper containing information. Two pages may be printed on one sheet.

(3) Type size will be no smaller than 10 point character height (vertical size) and no more than an average of 12 characters per inch. Use of type-setting techniques to reduce type size below 10 points or to increase characters beyond 12 per inch is not permitted. Such techniques are construed as a deliberate attempt to circumvent the intent of page limitations set forth in paragraph (i)(A) of this subsection L.102.

(4) Proposal must lie flat when open; elaborate binding is not desirable.

(5) No models, mockups, or video tapes will be accepted.

(6) Technical proposals will be prepared in the same sequence as the statement of work.

(ii) Content.

All proposals must be complete and respond directly to the requirements of the solicitation. The factors and subfactors listed in Section M of the solicitation shall be addressed. Cost and supporting data shall be included only in the cost volume. All other information shall be included in the technical volume.

(L.103) The Government may make multiple awards resulting from this solicitation.

Section M, Evaluation Factors for Award

Use of the standard evaluation factors is preferred. If the standard evaluation factors are modified in any way, the modifications must be clearly expressed so that the result is unambiguous. Additions to and deletions from the contents of this Section M must be clearly annotated in the solicitation summary (see 235.7006(d)(A.1)(vii)).

*(M.1) FAR 52.217–5 Evaluation of Options (Applicable if the solicitation indicates that options are anticipated in the resulting contract. When this provision is included, evaluation criteria for options shall be included in Section M.)

*(M.2) Proposal Evaluation Procedures and Basis for Award. Proposals will be evaluated and award made as follows:

(i) Basis for award.

The award decision will be based on evaluation of all factors and subfactors set forth in this solicitation. The Government may select the source whose proposal offers the greatest value to the Government in terms of technical, cost or price, and other factors set forth in the solicitation. The source selected may or may not have the lowest proposed total costs.

(ii) Evaluation factors.

Proposals will be evaluated in accordance with the following factors. The technical factor is more important than the cost factor. The technical subfactors are in descending order of importance unless otherwise stated in the solicitation. The cost subfactors are of equal weight.

(A) Technical.

(1) Technical approach. The soundness of the offeror's technical approach, including the offeror's demonstrated understanding of the technical requirement.

(2) Qualification. The experience and qualifications of the proposed personnel relevant to the proposed task. The quantity and quality of the offeror's

corporate experience relevant to the proposed task.

(3) Management. The degree to which the offeror demonstrates the ability to effectively and efficiently manage and administer the program to a successful conclusion.

(4) Facilities. The degree to which the proposed facilities enable accomplishment of the proposed effort.

(B) Cost.

(1) Reasonableness. Proposed estimated cost and fee (if any).

(2) Completeness. The adequacy of the identification, estimation and support of all relevant costs.

(3) Realism. The consistency of the cost proposal with the technical effort proposed, the organizational structure, method of operations and cost accounting practices.

*(M.3) 52.215–34 Evaluation of Offers for Multiple Awards.

[62 FR 16100, Apr. 4, 1997, as amended at 62 FR 37147, July 11, 1997; 62 FR 49305, Sept. 19, 1997]

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

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236.701 Standard and optional forms for use in contracting for construction or dismantling, demolition, or removal of improvements.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36421, July 31, 1991, unless otherwise noted.

Subpart 236.1—General

236.102 Definitions.

(1) A–E means architect-engineer.

(2) *Construction activity* means an activity at any organizational level of the DoD that—

(i) Is responsible for the architectural, engineering, and other related technical aspects of the planning, design, and construction of facilities; and

(ii) Receives its technical guidance from the Army Office of the Chief of Engineers, Naval Facilities Engineering Command, or Air Force Directorate of Civil Engineering.

(3) *Network analysis system* means recognized scheduling systems that show the duration, sequential relationship, and interdependence of various work activities, e.g., critical path method.

(4) *United States firm* is defined in the provisions at 252.236–7010, Overseas Military Construction-Preference for United States Firms, and 252.236–7011,

Overseas Architect-Engineer Services-Restriction to United States firms.

[56 FR 36421, July 31, 1991, as amended at 62 FR 2857, Jan. 17, 1997]

Subpart 236.2—Special Aspects of Contracting for Construction

236.201 Evaluation of contractor performance.

(a) *Preparation of performance evaluation reports.* Use DD Form 2626, Performance Evaluation (Construction), instead of SF 1420.

(c) *Distribution and use of performance reports.* (1) Send each contractor performance evaluation report to the central data base immediately upon its completion.

(A) The central data base—

(*1*) Is operated by—

U.S. Army Engineer Division, North Pacific, ATTN: CENPD–CT, P.O. Box 2870, Portland, OR 97208–2870, Telephone: (503)326–3459/4910

(*2*) Keeps reports on file for six years.

(B) For computer access to the files, contact the North Pacific Division for user log-on and procedures.

(2) Use performance records when making responsibility determinations under FAR 9.1.

(A) For each contract expected to exceed $1,000,000, retrieve all performance records on file in the central data base for all prospective contractors that have a reasonable chance of being selected for award. The central data base will provide—

(*1*) Overall current performance ratings;

(*2*) Descriptions of contracts on which ratings are based (e.g., type of facility, contract value, applicable performance elements); and

(*3*) A telephone number to obtain transcripts and documentation of pertinent evaluation details.

(B) Consider using the performance records in the data base for lower value contracts and to assess a contractor's performance record for reasons other than an award decision, such as subcontractor approval and awards for excellence.

[56 FR 36421, July 31, 1991, as amended at 61 FR 7749, Feb. 29, 1996]

236.203 Government estimate of construction costs.

(c)(i) Designate the Government estimate as ''For Official Use Only,'' unless the information is classified. If it is, handle the estimate in accordance with security regulations.

(ii) For sealed bid acquisitions—

(A) File a sealed copy of the Government estimate with the bids. (In the case of two-step acquisitions, this is done in the second step.)

(B) After the bids are read and recorded, remove the ''For Official Use Only'' designation and read and record the estimate as if it were a bid, in the same detail as the bids.

236.204 Disclosure of the magnitude of construction projects.

Additional price ranges are—

(i) Between $10,000,000 and $25,000,000;

(ii) Between $25,000,000 and $100,000,000;

(iii) Between $100,000,000 and $250,000,000;

(iv) Between $250,000,000 and $500,000,000; and

(v) Over $500,000,000.

[61 FR 7749, Feb. 29, 1996]

236.206 Liquidated damages.

See 212.204 for instructions on use of liquidated damages.

236.270 Expediting construction contracts.

(a) 10 U.S.C. 2858 requires agency head approval to expedite the completion date of a contract funded by a Military Construction Appropriations Act, if additional costs are involved. This approval authority may not be redelegated. The approval authority must—

(1) Certify that the additional expenditures are necessary to protect the National interest; and

(2) Establish a reasonable completion date for the project.

(b) The contracting officer may approve an expedited completion date if no additional costs are involved.

236.271 Cost-plus-fixed-fee contracts.

Annual military construction appropriations acts restrict the use of cost-plus-fixed-fee contracts (see 216.306(c)).

[61 FR 7749, Feb. 29, 1996]

236.272 Prequalification of sources.

(a) Prequalification procedures may be used when necessary to ensure timely and efficient performance of critical construction projects. Prequalification—

(1) Results in a list of sources determined to be qualified to perform a specific construction contract; and

(2) Limits offerors to those with proven competence to perform in the required manner.

(b) The head of the contracting activity must—

(1) Authorize the use of prequalification by determining, in writing, that a construction project is of an urgency or complexity that requires prequalification; and

(2) Approve the prequalification procedures.

(c) For small businesses, the prequalification procedures must require the qualifying authority to—

(1) Request a preliminary recommendation from the appropriate Small Business Administration regional office, if the qualifying authority believes a small business is not responsible;

(2) Permit the small business to submit a bid or proposal if the preliminary recommendation is that the small business is responsible; and

(3) Follow the procedures in FAR 19.6, if the small business is in line for award and is found nonresponsible.

236.273 Network analysis systems.

Use head of the contracting activity approved procedures for preparing and using network analysis systems, whether contractor prepared, or Government prepared.

236.274 Construction in foreign countries.

(a) In accordance with Section 112 of Public Law 104–32 and similar sections in subsequent military construction appropriations acts, military construction contracts that are estimated to exceed $1,000,000 and are to be performed in the United States territories and possessions in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf, shall be awarded only to United States firms, unless the lowest responsive and responsible offer of a United States firm exceeds the lowest responsive and responsible offer of a foreign firm by more than 20 percent.

(b)When a technical working agreement with a foreign government is required for a construction contract—

(1) Consider inviting the Army Office of the Chief of Engineers, or the Naval Facilities Engineering Command to participate in the negotiations.

(2) The agreement should, as feasible and where not otherwise provided for in other agreements, cover all elements necessary for the construction that are required by laws, regulations, and customs of the United States and the foreign government, including—

(i) Acquisition of all necessary rights;

(ii) Expeditious, duty-free importation of labor, material, and equipment;

(iii) Payment of taxes applicable to contractors, personnel, materials, and equipment;

(iv) Applicability of workers' compensation and other labor laws to citizens of the U.S., the host country, and other countries;

(v) Provision of utility services;

(vi) Disposition of surplus materials and equipment;

(vii) Handling of claims and litigation; and

(viii) Resolution of any forseeable problems that can be appropriately included in the agreement.

[56 FR 36421, July 31, 1991, as amended at 62 FR 2856, Jan. 17, 1997; 62 FR 34127, June 24, 1997]

Subpart 236.3—Special Aspects of Sealed Bidding in Construction Contracting

236.303 Invitations for bids.

236.303–70 Additive or deductive items.

(a) If it appears that sufficient funds may not be available for all the desired

construction features, consider using a bid schedule with—

(1) A first or base bid item covering the work generally as specified; and

(2) A list of priorities that contains one or more additive or deductive bid items which progressively add or omit specified features of the work in a stated order of priority. (Normally, do not mix additive and deductive bid items in the same solicitation.)

(b) Before opening the bids, record in the contract file the amount of funds available for the project.

(c) Determine the low bidder and the bid items to be awarded as follows—

(1) Use the recorded amount of available funds to determine the low bidder, which will be the bidder that—

(i) Is otherwise eligible for award; and

(ii) Offers the lowest aggregate amount for the first or base bid item, plus or minus (in order of listed priority), those additive or deductive bid items that provide the most features within the funds available.

(2) Evaluate all bids, including those using the procedures in 219.7203, on the basis of the same additive or deductive bid items.

(i) If adding another item from the bid schedule list of priorities would make the award exceed the available funds, skip that item and go to the next item from the list of priorities.

(ii) Add the next item if an award can be made that includes the item and is still within the available funds.

(3) Use the list of priorities only to determine the low bidder. After determining the low bidder, an award may be made on any combination if—

(i) It is in the best interests of the Government;

(ii) Funds are available at time of award; and

(iii) The low bidder's price for the combination is less than the price offered by any other responsive, responsible bidder.

[56 FR 36421, July 31, 1991, as amended at 61 FR 18688, Apr. 29, 1996]

Subpart 236.4—Special Procedures for Negotiation of Construction Contracts

236.403 Cost-reimbursement contracts.

(1) For cost-plus-fixed-fee contracts, negotiate the fee for a prime contractor using departmental procedures approved by the Assistant Secretary of Defense (Production and Logistics).

(2) For cost-plus-incentive-fee contracts, negotiate the target fee for a prime contractor using the criteria and fee schedule in departmental procedures to determine—

(i) The reasonableness of the target cost;

(ii) The maximum and minimum fees to be established; and

(iii) The fee adjustment formula.

Subpart 236.5—Contract Clauses

236.570 Additional provisions and clauses.

(a) Use the following clauses in all fixed-price construction solicitations and contracts—

(1) 252.236–7000, Modification Proposals-Price Breakdown; and

(2) 252.236–7001, Contract Drawings, Maps, and Specifications.

(b) Use the following provisions and clauses in fixed-price construction contracts and solicitations as applicable—

(1) 252.236–7002, Obstruction of Navigable Waterways, when the contract will involve work near or on navigable waterways.

(2) When the head of the contracting activity has approved use of a separate bid item for mobilization and preparatory work, use either—

(i) 252.236–7003, Payment for Mobilization and Preparatory Work. Use this clause for major construction contracts that require—

(A) Major or special items of plant and equipment; or

(B) Large stockpiles of material which are in excess of the type, kind, and quantity which would be normal for a contractor qualified to undertake the work; or

(ii) 252.236–7004, Payment for Mobilization and Demobilization. Use this

clause for contracts involving major mobilization expense, or plant equipment and material (other than the situations covered in paragraph (b)(2)(i) of this section) made necessary by the location or nature of the work.

(A) Generally, allocate 60 percent of the lump sum price in paragraph (a) of the clause to the cost of mobilization.

(B) Vary this percentage to reflect the circumstances of the particular contract, but in no event should mobilization exceed 80 percent of the payment item.

(3) 252.236–7005, Airfield Safety Precautions, when construction will be performed on or near airfields.

(4) 252.236–7006, Cost Limitation, if the solicitation's bid schedule contains one or more items subject to statutory cost limitations, and if a waiver has not been granted (FAR 36.205).

(5) 252.236–7007, Additive or Deductive Items, if the procedures in 236.303–70 are being used.

(6) 252.236–7008, Contract Prices—Bidding Schedule, if the contract will contain only unit prices for some items.

(c) Use the provision at 252.236–7010, Overseas Military Construction-Preference for United States Firms, in solicitations for military construction contracts that are estimated to exceed $1,000,000 and are to be performed in the United States territories and possessions in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf.

(d) Also see 246.710(4) for an additional clause applicable to construction contracts to be performed in Germany.

[56 FR 36421, July 31, 1991, as amended at 57 FR 42632, Sept. 15, 1992; 62 FR 2856, Jan. 17, 1997; 62 FR 34127, June 24, 1997]

Subpart 236.6—Architect-Engineer Services

236.601 Policy.

(1) 10 U.S.C. 2807(b) requires notice to Congress 21 days before the initial obligation of funds if a contract is for—

(i) A–E services or construction design for military construction, military family housing, or restoration or replacement of damaged or destroyed facilities; and

(ii) An estimated total contract price of $300,000 or more.

(2) During the 21 day period, synopsis of the proposed contract action and administrative actions leading to the award may be started.

236.602 Selection of firms for architect-engineer contracts.

236.602–1 Selection criteria.

(a)(i) Establish the evaluation criteria before making the public announcement required by FAR 5.205(c) and include the criteria and their relative order of importance in the announcement. The evaluation criteria should be project specific. Use the information in the DD Form 1391, FY—— Military Construction Project Data, when available, and other pertinent project data in preparing the evaluation criteria.

(4) Use performance evaluation data from the central data base identified in 236.201.

(6) The primary factor in A–E selection is the determination of the most highly qualified firm. Also consider secondary factors such as geographic proximity and equitable distribution of work, but do not attribute greater significance to the secondary factors than to qualifications and past performance. Do not reject the overall most highly qualified firm solely in the interest of equitable distribution of contracts.

(A) Consider the volume of work awarded by DoD during the previous 12 months. In considering equitable distribution of work among A–E firms, include small and small disadvantaged business firms and firms that have not had prior DoD contracts—

(*1*) Use data extracted from the Defense Contract Action Data System (DCADS) compiled from DD Form 350, Individual Contracting Action Report. DCADS data may be obtained from the central data base identified in 236.201(c)(1).

(*2*) Do not consider awards to overseas offices for projects outside the United States, its territories and possessions. Do not consider awards to a subsidiary if the subsidiary is not normally subject to management decisions, bookkeeping, and policies of a

holding or parent company or an incorporated subsidiary that operates under a firm name different from the parent company. This allows greater competition.

(B) Consider as appropriate superior performance evaluations on recently completed DoD contracts.

(C) Consider the extent to which potential contractors identify and commit to small business and to small disadvantaged business, historically black college and university, or minority institution performance of the contract, whether as a joint venture, teaming arrangement, or subcontractor.

[56 FR 36421, July 31, 1991, as amended at 59 FR 27673, May 27, 1994]

236.602–2 Evaluation boards.

(a) Preselection boards are authorized, if the lists they develop are approved by the head of the construction activity. If used, preselection boards will—

(i) Be formally constituted;

(ii) Consist of at least three members; and

(iii) Prepare a preselection list of the maximum practicable number of qualified firms using data described in FAR 36.603, and any other pertinent information.

236.602–4 Selection authority.

(a)(i) The following selections require special approval—

(A) The estimated contract price exceeds $500,000;

(B) The firm to be selected has already been awarded contracts totaling over $500,000 during the current calendar year by the construction activity; or

(C) Supplemental work added to an existing contract causes the total contract price to exceed $500,000. Special approval is not, however, required for supplemental work added to a contract under the clause at FAR 52.243–1, Changes-Fixed Price.

(ii) Special approval means approval by the next higher organizational level above the construction activity or as established in contracting activity procedures and must be obtained prior to negotiation with the A–E firm.

(c) A finding that some of the firms on the selection report are unqualified does not preclude approval of the report, provided that a minimum of three firms remains. The reasons for finding a firm or firms unqualified must be recorded.

236.602–70 Restriction on award of overseas architect-engineer contracts to foreign firms.

In accordance with Section 111 of Public Law 104–32 and similar sections in subsequent military construction appropriations acts, A–E contracts funded by military construction appropriations that are estimated to exceed $500,000 and are to be performed in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Gulf, shall be awarded only to United States firms or to joint ventures of United States and host nation firms.

[62 FR 2858, Jan. 17, 1997]

236.604 Performance evaluation.

(a) *Preparation of performance reports.* Use DD Form 2631, Performance Evaluation (Architect-Engineer), instead of SF 1421.

(2) Prepare a separate performance evaluation after actual construction of the project. Ordinarily, the evaluating official should be the person most familiar with the A–E's performance.

(c) Distribution and use of performance reports.

(i) Forward each performance report to the central data base identified in 236.201(c) after completing the review. The procedures in 236.201 also apply to A–E contracts.

(ii) File and use the SF 1421, Performance Evaluation (Architect-Engineer), in a manner similar to the SF 254, Architect-Engineer and Related Services Questionnaire.

[56 FR 36421, July 31, 1991, as amended at 61 FR 7749, Feb. 29, 1996]

236.606 Negotiations.

236.606–70 Statutory fee limitation.

(a) 10 U.S.C. 4540, 7212, and 9540 limit the contract price (or fee) for A–E services for the preparation of designs, plans, drawings, and specifications to six percent of the project's estimated construction cost.

(b) The six percent limit also applies to contract modifications, including modifications involving—

(1) Work not initially included in the contract. Apply the six percent limit to the revised total estimated construction cost.

(2) Redesign. Apply the six percent limit as follows—

(i) Add the estimated construction cost of the redesign features to the original estimated construction cost;

(ii) Add the contract cost for the original design to the contract cost for redesign; and

(iii) Divide the total contract design cost by the total estimated construction cost. The resulting percentage may not exceed the six percent statutory limitation.

(c) The six percent limit applies only to that portion of the contract (or modification) price attributable to the preparation of designs, plans, drawings, and specifications. If a contract or modification also includes other services, the part of the price attributable to the other services is not subject to the six percent limit.

236.609 Contract clauses.

236.609–70 Additional provision and clause.

(a)(1) Use the clause at 252.236–7009, Option for Supervision and Inspection Services, in solicitations and contracts for A–E services when—

(i) The contract will be fixed price; and

(ii) Supervision and inspection services by the A–E may be required during construction.

(2) Include the scope of such services in appendix A of the contract.

(b) Use the provision 252.236–7011, Overseas Architect-Engineer Services—Restriction to United States Firms, in solicitations for A–E contracts that are estimated to exceed $500,000 and are to be performed in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Gulf.

[56 FR 36421, July 31, 1991, as amended at 62 FR 2858, Jan. 17, 1997]

Subpart 236.7—Standard and Optional Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements

236.701 Standard and optional forms for use in contracting for construction or dismantling, demolition, or removal of improvements.

(c) Do not use Optional Form 347, Order for Supplies and Services, (see 213.505–2).

PART 237—SERVICE CONTRACTING

Sec.

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237.7402 Contract clause.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36424, July 31, 1991, unless otherwise noted.

Subpart 237.1—Service Contracts—General

237.102 Policy.

To the maximum extent practicable, acquire services on the basis of the task to be performed rather than on the basis of the number of hours to be provided.

[56 FR 67220, Dec. 30, 1991]

237.102–70 Prohibition on contracting for firefighting or security-guard functions.

(a) Under 10 U.S.C. 2465, the DoD is prohibited for entering into contracts for the performance of firefighting or security-guard functions at any military installation or facility unless—

(1) The contract is to be carried out at a location outside the United States (to include any U.S. commonwealth, territory, or possession) at which members of the armed forces would have to be used for the performance of firefighting or security-guard functions at the expense of unit readiness;

(2) The contract will be carried out on a Government-owned but privately operated installation; or

(3) The contract (or renewal of a contract) is for the performance of a function under contract on September 24, 1983.

(b) Under Section 2907 of Public Law 103–160, this prohibition does not apply to services at installations being closed (see subpart 237.74).

[60 FR 61599, Nov. 30, 1995]

237.104 Personal services contracts.

(b)(i) Authorization to acquire the personal services of experts and consultants is included in Public Law 101–165, section 9002. Personal service contracts for expert and consultant services must also be authorized by a determination and findings (D&F) in accordance with department/agency regulations.

(A) Generally, the D&F should authorize one contract at a time; however, an authorizing official may issue a blanket D&F for classes of contracts.

(B) Prepare each D&F in accordance with FAR 1.7 and include a determination that—

(*1*) The duties are of a temporary or intermittent nature;

(*2*) Acquisition of the services is advantageous to the national defense;

(*3*) DoD personnel with necessary skills are not available;

(*4*) Excepted appointment cannot be obtained;

(*5*) A nonpersonal services contract is not practicable;

(*6*) Statutory authority, 5 U.S.C. 3109 and other legislation, apply; and

(*7*) Any other determination required by statues has been made.

(ii) Personal services contracts for health care are authorized by 10 U.S.C. 1091.

(A) This authority may be used to acquire—

(*1*) Direct health care services provided in medical treatment facilities; and

(*2*) Services of clinical counselors, family advocacy program staff, and victim's services representatives to members of the Armed Forces and covered beneficiaries who require such services, provided in medical treatment facilities or elsewhere. Persons

with whom a personal services contract may be entered into under this authority include clinical social workers, psychologists, psychiatrists, and other comparable professionals who have advanced degrees in counseling or related academic disciplines and who meet all requirements for State licensure and board certification requirements, if any, within their fields of specialization.

(B) Sources for personal services contracts with individuals under the authority of 10 U.S.C. 1091 shall be selected through the procedures in this section. These procedures do not apply to contracts awarded to business entities other than individuals. Selections made using the procedures in this section are exempt by statute from FAR part 6 competition requirements (see 206.001(b)).

(C) Approval requirements for—

(*1*) Direct health care personal service contracts (see 237.104(b)(ii)(A)(*1*)) and a pay cap are in DoDI 6025.5, Personal Services Contracting Authority for Direct Health Care Providers. Requests to enter into a personal service contract for direct health care services must be approved by the commander of the medical/dental treatment facility where the services will be performed.

(*2*) Services of clinical counselors, family advocacy program staff, and victim's services representatives (see 237.104(b)(ii)(A)(*2*)), shall be in accordance with agency procedures.

(D) The contracting officer must ensure that the requiring activity provides a copy of the approval with the purchase request.

(E) The contracting officer must provide adequate advance notice of contracting opportunities to individuals residing in the area of the facility. The notice must include the qualification criteria against which individuals responding will be evaluated. The contracting officer shall solicit applicants through at least one local publication which serves the area of the facility. Acquisitions under this section for personal service contracts are exempt from the posting and synopsis requirements of FAR part 5.

(F) The contracting officer shall provide the qualifications of individuals responding to the notice to the commander of the facility for evaluation and ranking in accordance with agency procedures. Individuals must be considered solely on the basis of the professional qualifications established for the particular personal services being acquired and the Government's estimate of reasonable rates, fees, or other costs. The commander of the facility shall provide the contracting officer with rationale for the ranking of individuals, consistent with the required qualifications.

(G) Upon receipt from the facility of the ranked listing of applicants, the contracting officer shall either—

(*1*) Enter into negotiations with the highest ranked applicant. If a mutually satisfactory contract cannot be negotiated, the contracting officer shall terminate negotiations with the highest ranked applicant and enter into negotiations with the next highest.

(*2*) Enter into negotiations with all qualified applicants and select on the basis of qualifications and rates, fees, or other costs.

(H) In the event only one individual responds to an advertised requirement, the contracting officer is authorized to negotiate the contract award. In this case, the individual must still meet the minimum qualifications of the requirement and the contracting officer must be able to make a determination that the price is fair and reasonable.

(I) If a fair and reasonable price cannot be obtained from a qualified individual, the requirement should be canceled and acquired using procedures other than those set forth in this section.

(f)(i) Payment to each expert or consultant for personal services under 5 U.S.C. 3109 shall not exceed the highest rate fixed by the Classification Act Schedules for grade GS–15, except the following which shall not exceed the highest rate payable to a GS–18—

(A) Professional engineering services primarily involving research and development; or

(B) Professional services involving physical sciences, natural sciences, or medicine.

(ii) The contract may provide for the same per diem and travel expenses authorized for a Government employee, including actual transportation and

per diem in lieu of subsistence for travel between home or place of business and official duty station.

(iii) Coordinate with the civilian personnel office on benefits, taxes, personnel ceilings, and maintenance of records.

[56 FR 36424, July 31, 1991, as amended at 60 FR 2888, Jan. 12, 1995; 60 FR 61599, Nov. 30, 1995]

237.106 Funding and term of service contracts.

(1) Personal service contracts for expert or consultant services shall not exceed one year.

The nature of the duties must be—

(i) Temporary (not more than one year); or

(ii) Intermittent (not cumulatively more than 130 days in one year).

(2) The following categories of service contracts, funded by annual appropriations, are authorized to extend beyond the end of the fiscal year—

(i) One year contracts for maintenance of tools, equipment, or facilities (see 10 U.S.C. 2410a(1));

(A) Tools generally are items found in supply groups 51 and 52, such as hand and power tools, gauges, measuring devices, etc.

(B) Examples of equipment or facilities maintenance services include—

(*1*) Custodial or housekeeping services;

(*2*) Security or fire protection services;

(*3*) Refuse collection;

(*4*) Grounds or surfaced area maintenance;

(*5*) Heating systems operation and maintenance;

(*6*) Military family housing maintenance;

(*7*) Energy monitoring control systems maintenance and repair;

(*8*) Commissary refrigeration maintenance and repair;

(*9*) Medical facility real property maintenance management;

(*10*) Hospital aseptic maintenance management;

(*11*) Animal or pest control;

(*12*) Maintenance of flight simulators;

(*13*) Maintenance of computers and associated hardware; and

(*14*) Maintenance of weapon systems;

(ii) One year contracts for depot maintenance (see 10 U.S.C. 2410a(3));

(iii) Multi-year service contracts;

(iv) One year requirements or indefinite quantity contracts, as defined in FAR 16.503 and FAR 16.504, in which the minimum quantities are certain to be ordered in the fiscal year current at the beginning of the contract term (but see FAR 32.705–1(b));

(v) Personal service contracts for experts or consultants or contracts for educational services, which cannot feasibly be subdivided for separate performance in each fiscal year; or

(vi) One year contracts for operation of Government equipment (see 10 U.S.C. 2410a(4)).

[56 FR 36424, July 31, 1991, as amended at 57 FR 14994, Apr. 23, 1992]

237.109 Services of quasi-military armed forces.

See 237.102–70b for prohibition on contracting for firefighting or security-guard functions.

[60 FR 61599, Nov. 30, 1995]

237.170 Uncompensated overtime.

237.170–1 Scope.

This section implements section 834 of Pub. L. 101–510 (10 U.S.C. 2331).

[56 FR 67220, Dec. 30, 1991]

237.170–2 General policy.

(a) Use of uncompensated overtime is not encouraged.

(b) When services are acquired on the basis of the number of hours to be provided, rather than on the task to be performed, the solicitation shall require offerors to identify uncompensated overtime hours and the uncompensated overtime rate for direct charge Fair Labor Standards Act—exempt personnel included in their proposals and subcontractor proposals. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct.

[56 FR 67220, Dec. 30, 1991, as amended at 57 FR 14995, Apr. 23, 1992]

237.170–3 Solicitation provision.

Use the provision at 252.237–7019, Identification of Uncompensated Overtime, in all solicitations estimated at $100,000 or more, for services to be acquired on the basis of the number of hours to be provided.

[56 FR 67220, Dec. 30, 1991, as amended at 57 FR 14995, Apr. 23, 1992]

Subpart 237.2—Advisory and Assistance Services

237.203 Types of advisory and assistance services.

(d) *Engineering and technical service.*

(i) Engineering and technical services consist of—

(A) Contract field services, which are engineering and technical services provided on site at Defense locations by the trained and qualified engineers and technicians of commercial or industrial companies;

(B) Contract plant services, which are engineering and technical services provided by the trained and qualified engineers and technicians of a manufacturer of military equipment or components, in the manufacturer's own plants and facilities; and

(C) Field service representatives, which are employees of a manufacturer of military equipment or components who provide a liaison or advisory service between their company and the military users of their company's equipment or components.

(ii) Every contract for engineering and technical services alone or as part of an end item, shall—

(A) Show those services as a separately priced line item;

(B) Contain definitive specifications for the services; and

(C) Show the work-months involved.

(iii) Agency heads may authorize personal service contracts for contract field services to meet an unusual essential mission need. The authorization will be for an interim period only.

237.203–70 Acquisition of audit services.

(a) *General policy.* (1) Departments and agencies shall not contract for audit services unless the cognizant DoD audit organization determines that expertise required to perform the audit is not available within the DoD audit organization, or temporary audit assistance is required to meet audit reporting requirements mandated by law or DoD regulation.

(2) DoDD 7600.2, Audit Policies, provides DoD audit policies.

(3) DoDI 7600.6, Audit of Nonappropriated Fund Instrumentalities and Related Activities, provides guidance to audit organizations for audits of nonappropriated fund organizations.

(4) DoD 7600.7–M, Internal Audit Manual, chapter 20, provides policy and guidance to DoD audit organizations for the monitoring of audit services provided by non-Federal auditors.

(b) *Contract period.* Except in unusual circumstances, contracts for recurring audit services shall be awarded for a one year period with at least two option years.

(c) *Approvals.* Contracting officers shall not issue a solicitation for audit services unless the requiring activity provides evidence that the cognizant DoD audit organization has approved the statement of work. The requiring agency shall obtain the same evidence of approval for subsequent material changes to the statement of work.

(d) *Solicitation provisions and contract clauses.* (1) Use the provision of 252.237–7000, Notice of Special Standards of Responsibility, in solicitations for audit services.

(2) Use the clause at 252.237–7001, Compliance with Audit Standards, in solicitations and contracts for audit services.

[56 FR 36424, July 31, 1991, as amended at 57 FR 42632, Sept. 15, 1992]

237.205 Management controls.

DoD procedures are in DoDD 4205.2, DoD Contracted Advisory and Assistance Services.

237.206 Requesting activity responsibilities.

(b) On acquisitions for studies, the purchase request package must contain a signed statement from the technical officer responsible for the study stating that the Defense Technical Information Center (DTIC) and other information sources have been queried, that evidence of those queries are on file,

and no existing scientific or technical report could fulfill the requirement.

(c) The authority, without redelegation authority (see DoDD 4205.2), to approve the use of advisory and assistance services in contracts over $50,000 is—

(i) An SES manager;

(ii) A general or flag officer;

(iii) An officer in O–6 grade filling a general or flag officer level position; or

(iv) An officer in O–6 grade who has subordinate SES personnel.

237.270 Master agreements.

Section 2304 of Title 10, U.S.C., authorizes award of master agreements under which orders may be issued for specific contract advisory and assistance services (CAAS). The authority to award master agreements expires September 30, 1994.

[58 FR 28471, May 13, 1993]

237.270–1 Establishing agreements.

(a) Use this section only for types of advisory and assistance services described in FAR 37.203.

(b) Establish agreements using competitive procedures.

(c) Use the procedures for basic ordering agreements (see FAR 16.703) except—

(1) Synopsize solicitations for agreements as if they were service contracts expected to exceed $25,000;

(2) Establish agreements with at least three of the sources submitting offers; and

(3) Establish agreements for a period not to exceed two years, and do not extend them.

237.270–2 Ordering procedures.

(a) Ordering procedures for master agreements are the same as for basic ordering agreements, except that requests for proposals for individual orders need not be synopsized, nor is a justification and approval required. Orders under master agreements are an additional circumstance permitting full and open competition after exclusion of sources (FAR subpart 6.2).

(b) Before placing an order under a master agreement, the contracting officer—

(1) Must reasonably expect that at least two sources with established agreements will submit offers or an order cannot be placed against an agreement;

(2) Shall request offers from all agreements holders;

(3) Shall ensure the statement of work clearly specifies the tasks to be performed;

(4) Shall accept the offer most advantageous to the Government, considering all relevant factors specified in the request for offers;

(5) Shall synopsize issued orders in accordance with FAR 5.302; and

(6) Shall ensure orders have an identifiable deliverable.

237.270–3 Limitation.

The total value of orders issued under master agreements in a fiscal year by any contracting activity (as defined in 202.101) shall not exceed 30 percent of the value of all contracts for advisory and assistance services awarded by that activity during fiscal year 1989. This limitation may be increased from 30 percent to not more than 50 percent if—

(a) The head of the contracting activity (HCA) waives the 30 percent limitation. Each waiver shall be in the form of a determination and finding prepared and processed in accordance with department/agency procedures. The determination and finding must specify that the use of master agreements is necessary to further the policy of acquiring advisory and assistance services on the basis of the task to be performed rather than on the basis of the number of hours provided; and

(b) The agency publishes a notice of the waiver in the FEDERAL REGISTER and 60 days have passed since the notice of the HCA waiver appeared in the FEDERAL REGISTER. FEDERAL REGISTER notices shall be forwarded for publication in accordance with agency procedures.

237.270–4 Reporting requirements.

(a) Each department and agency shall provide an annual report to OSD, ATTN: OUSD(A)DP(CPA), not later than November 15 of each year. The report control symbol is DD–P&L(A) 1849. The report shall include—

(1) The total number of master agreements awarded (with names of contractors and type of CAAS being acquired) and estimated dollar value of each agreement;

(2) The number of task orders awarded under each master agreement (by contractor) and dollar value of each (including modifications); and

(3) The period covered by the report.

(b) Each department and agency shall centrally maintain the following information, for all master agreements expected to involve work in excess of $2 million (including modifications), on a fiscal year basis—

(1) The number of bid protests filed, number sustained, and number of awards terminated during the competition for master agreements and task orders;

(2) The program's effect on the procurement administrative leadtime for CAAS;

(3) Statements of work describing the services contracted for and the source evaluation criteria used to evaluate proposals for award;

(4) The level of small business participation in the program; and

(5) The number of contracts where a contractor certified that a conflict of interest exists under the regulations implementing section 8141 of the National Defense Authorization Act for FY89, the nature of the conflict of interest, and the steps taken to resolve such conflicts of interest among firms that qualify for master agreements.

Subpart 237.70—Mortuary Services

237.7000 Scope.

This subpart contains acquisition procedures for contracts for mortuary services (the care of remains) for military personnel within the U.S. Departments/agencies may use these procedures as guidance in areas outside the U.S. for both deceased military and civilian personnel.

237.7001 Method of acquisition.

(a) *Requirements type contract.* By agreement among the military activities, one activity in each geographical area will contract for the estimated requirements for the care of remains for all military activities in the area. Use a requirements type contract (see FAR 16.503) when the estimated annual requirements for the activities in the area are ten or more.

(b) *Purchase order.* Where no contract exists, use DD Form 1155, Order for Supplies and Services/Request for Quotations, to obtain mortuary services.

237.7002 Area of performance.

Determine and define the geographical area to be covered by the contract using the following general guidelines—

(a) Use political boundaries, streets, or other features as demarcation lines.

(b) The size should be roughly equivalent to the contiguous metropolitan or municipal area enlarged to include the activities served.

(c) If the area of performance best suited to the needs of a particular contract is not large enough to include a carrier terminal commonly used by people within such area, the contract area of performance shall specifically state that it includes such terminal as a pickup or delivery point.

237.7003 Distribution of contracts.

In addition to normal contract distribution, send three copies of each contract to each activity authorized to use the contract, and two copies to each of the following—

(a) HQDA (TAPC–PEC–D), Alexandria, VA 22331.

(b) Commander, Naval Medical Command, Department of the Navy (MED 3141), 23rd and E Streets, NW, Washington, DC 20372.

(c) Headquarters, AFMPC–MPCCM, Randolph AFB, TX 78150.

237.7004 Solicitation provisions and contract clauses.

(a) Use the provision at 252.237–7002, Award to Single Offeror, in all sealed bid solicitations for mortuary services. Use the basic provision with its Alternate I in all negotiated solicitations for mortuary services.

(b) Use the following clauses in all mortuary service solicitations and contracts, except do not use the clauses at 252.237–7004, Area of Performance, and 252.237–7010, Facility Requirements, in

solicitations or contracts that include port of entry requirements—

(1) 252.237–7003, Requirements, (insert activities authorized to place orders in paragraph (e) of the clause);

(2) 252.237–7004, Area of Performance;

(3) 252.237–7005, Performance and Delivery;

(4) 252.237–7006, Subcontracting;

(5) 252.237–7007, Termination for Default;

(6) 252.237–7008, Group Interment;

(7) 252.237–7009, Permits;

(8) 252.237–7010, Facility Requirements; and

(9) 252.237–7011, Preparation History.

(c) Use the clause at FAR 52.245–4, Government-Furnished Property (Short Form), in solicitations and contracts that include port of entry requirements.

Subpart 237.71—Laundry and Dry Cleaning Services

237.7100 Scope.

This subpart contains acquisition procedures for laundry and dry cleaning services within the United States. It may be used as guidance in all other locations.

237.7101 General.

(a) Except for hospital requirements, acquire laundry and dry cleaning services on a count-of-articles basis.

(b) Laundry services in support of hospitals may be acquired on the basis of a count-of-articles or by bulk weight.

(1) Acquisitions by weight may be on either a presorted (bag type) or unsorted (simple bulk weight) basis.

(2) In selecting the basis, consider such factors as price, administrative costs, aseptic requirements, risk of contamination or cross-contamination, and volume and nature of articles to be serviced.

237.7102 Solicitation provisions and contract clauses.

(a) Use the provision at 252.237–7012, Instruction to Offerors (Count-of-Articles), in solicitations for laundry and dry cleaning services to be provided on a count-of-articles basis.

(b) Use the provision at 252.237–7013, Instruction to Offerors (Bulk Weight), in solicitations for laundry services to be provided on a bulk weight basis.

(c) Use the clause at 252.237–7014, Loss or Damage (Count-of-Articles), in solicitations and contracts for laundry and dry cleaning services to be provided on a count-of-articles basis.

(d) Use the clause at 252.237–7015, Loss or Damage (Weight of Articles), in solicitations and contracts for laundry and dry cleaning services to be provided on a bulk weight basis.

(1) Insert a reasonable per pound price in paragraph (b) of the clause, based on the average per pound value. When the contract requires laundry services on a bag type basis, insert reasonable per pound prices by bag type.

(2) Insert an appropriate percentage in paragraph (e) of the clause, not to exceed eight percent.

(e) Use the clause at 252.237–7016, Delivery Tickets, in all solicitations and contracts for laundry and dry cleaning services.

(1) Use the clause with its Alternate I when services are for bag type laundry to be provided on a bulk weight basis.

(2) Use the clause with its Alternate II when services are unsorted laundry to be provided on a bulk weight basis.

(f) Use the clause at 252.237–7017, Individual Laundry, in solicitations and contracts for laundry and dry cleaning services to be provided to individual personnel.

(1) Insert the number of pieces of outer garments in paragraphs (d) (1) and (2) of the clause.

(2) The number of pieces and composition of a bundle in paragraphs (d) (1) and (2) of the clause may be modified to meet local conditions.

(g) Use the clause at 252.237–7018, Special Definitions of Government Property, in all solicitations and contracts for laundry and dry cleaning services.

[56 FR 36424, July 31, 1991, as amended at 62 FR 34127, June 24, 1997]

Subpart 237.72—Educational Service Agreements

237.7200 Scope.

(a) This subpart prescribes acquisition procedures for educational services from schools, colleges, universities, or other educational institutions. This subpart does not include tuition assistance agreements, i.e., payment by the Government of partial tuition under the off-duty educational program.

(b) As used in the subpart—

(1) ''*Facilities*'' do not include the institution's dining rooms or dormitories; and

(2) ''*Fees*'' does not include charges for meals or lodging.

237.7201 Educational service agreement.

(a) An educational service agreement is not a contract, but is an ordering agreement under which the Government may order educational services.

(b) Educational service agreements provide for ordering educational services when—

(1) The Government pays normal tuition and fees for educational services provided to a student by the institution under its normal schedule of tuition and fees applicable to all students generally; and

(2) Enrollment is at the institution under the institution's normal rules and in courses and curricula which the institution offers to all students meeting admission requirements.

237.7202 Limitations.

(a) Make no agreement under this subpart which will result in payment of Government funds for tuition or other expenses for training in any legal profession, except in connection with the detailing of commissioned officers to law schools under 10 U.S.C. 2004.

(b) Educational service agreements are not used to provide special courses or special fees for Government students.

237.7203 Duration.

(a) Educational service agreements are for an indefinite duration and remain in effect until terminated.

(b) The issuing activity must establish procedures to review each educational service agreement at least once each year. Review dates should consider the institution's academic calendar and occur at least 30 days before the beginning of a term. The purpose of the review is to incorporate changes to reflect requirements of any statute, Executive Order, FAR, or DFARS.

(c) If the contracting officer and the institution do not agree on required changes, terminate the agreement.

237.7204 Format and clauses for educational service agreements.

Educational service agreements under this subpart shall be in the following format. Add to the schedule any other provisions necessary to describe the requirements, if they are consistent with the following provisions and the policy of acquiring educational services in the form of standard course offerings at the prevailing rates of the institution.

EDUCATIONAL SERVICE AGREEMENT

Agreement No. _____

1. This agreement entered into on the _____ day of _____ 19___, is between the Government, represented by the Contracting Officer, and the Contractor, (name of institution), an educational institution located in _____ (city), _____ (state).

2. This agreement is for educational services to be provided by the Contractor to Government personnel at the Contractor's institution. The Contractor shall provide instruction with standard offerings of courses available to the public.

3. The Government shall pay for services under the Contractor's normal schedule of tuition and fees applicable to the public and in effect at the time the services are performed.

4. The Government will review this agreement annually before the anniversary of its effective date for the purpose of incorporating changes required by statutes, executive orders, the Federal Acquisition Regulation, or the Defense Federal Acquisition Regulation Supplement. Changes required to be made by modification to this agreement or by issuance of a superseding agreement. If mutual agreement on the changes cannot be reached, the Government will terminate this agreement.

5. The parties may amend this agreement only by mutual consent.

6. This agreement shall start on the date in paragraph 1 and shall continue until terminated.

7. The estimated annual cost of this agreement is $_____. This estimate is for administrative purposes only and does not impose any obligation on the Government to request any services or make any payment.

8. Advance payments are authorized by 10 U.S.C. 2396(a)(3).

9. Submit invoices to: _____ (name and address of activity).

SCHEDULE PROVISIONS

1. *Ordering procedures and services to be provided.* (a) The Contractor shall promptly deliver to the Contracting Officer one copy of each catalog applicable to this agreement, and one copy of any subsequent revision.

(b) The Government will request educational services under this agreement by a (insert type of request, such as, delivery order, official Government order, or other written communication). The (insert type of request, such as, delivery order, official Government order, or other written communication) will contain the number of this agreement and will designate as students at the Contractor's institution one or more Government-selected persons who have already been accepted for admission under the Contractor's usual admission standards.

(c) All students under this agreement shall register in the same manner, be subject to the same academic regulations, and have the same privileges, including the use of all facilities and equipment as any other students enrolled in the institution.

(d) Upon enrolling each student under this agreement, the Contractor shall, where the resident or nonresident status involves a difference in tuition or fees—

(i) Determine the resident or nonresident status of the student;

(ii) Notify the student and the Contracting Officer of the determination. If there is an appeal of the determination;

(iii) If there is an appeal of the determination, process the appeal under the Contractor's standard procedures;

(iv) Notify the student and Contracting Officer of the result; and

(v) Make the determination a part of the student's permanent record.

(e) The Contractor shall not furnish any instruction or other services to any student under this agreement before the effective date of a request for services in the form specified in paragraph (b) of this schedule.

2. *Change in curriculum.* The Contracting Officer may vary the curriculum for any student enrolled under this agreement but shall not require or make any change in any course without the Contractor's consent.

3. *Payment.* (a) The Government shall pay the Contractor the normal tuition and fees which the Contractor charges any students pursuing the same or similar curricula, except for any tuition and fees which this agreement excludes. The Contractor may change any tuition and fees, provided—

(1) The Contractor publishes the revisions in a catalog or otherwise publicly announces the revisions;

(2) Applies the revisions uniformly to all students studying the same or similar curricula;

(3) Provides the Contracting Officer notice of changes before their effective date.

(b) The Contractor shall not establish any tuition or fees which apply solely to students under this agreement.

(c) If the Contractor regularly charges higher tuition and fees for nonresident students, the Contractor may charge the Government the normal nonresident tuition and fees for students under this agreement who are nonresidents. The Government shall not claim resident tuition and fees for any student solely on the basis of the student residing in the State as a consequence of enrollment under this agreement.

(d) The Contractor shall charge the Government only the tuition and fees which relate directly to enrollment as a student. Tuition and fees may include—

(i) Penalty fees for late registration or change of course caused by the Government;

(ii) Mandatory health fees and health insurance charges; and

(iii) Any flat rate charge applicable to all students registered for research that appears in the Contractor's publicly announced fee schedule.

(e) The Contractor shall not charge the Government for—

(i) Permit charges, such as vehicle registration or parking fees, unless specifically authorized in the request for service; and

(ii) Any equipment, refundable deposits, or any items or services (such as computer time) related to student research.

(f) Normally, the Contractor shall not directly charge individual students for application fees or any other fee chargeable to this agreement. However, if the Contractor's standard procedures require payment of any fee before the student is enrolled under this agreement, the Contractor may charge the student. When the Contractor receives payment from the Government, the Contractor shall fully reimburse the student.

(g) For each term the Contractor enrolls students under this agreement, the Contractor shall submit _____ copies of an invoice listing charges for each student separately. The Contractor shall submit invoices within _____ days after the start of the term and shall include—

(i) Agreement number and inclusive dates of the term;

(ii) Name of each student;

(iii) A list showing each course for each student if the school charges by credit hour;

(iv) The resident or nonresident status of each student (if applicable to the Contractor's school); and

(v) A breakdown of charges for each student, including credit hours, tuition, application fee, and other fees. Provide a total for each student and a grand total for all students listed on the invoice.

(h) If unforeseen events require additional charges that are otherwise payable under the Contractor's normal tuition and fee schedule, the Contractor may submit a supplemental invoice or make the adjustment on the next regular invoice under this agreement. The Contractor shall clearly identify and explain the supplemental invoice or the adjustment.

(i) The Contractor shall apply any credits resulting from withdrawal of students, or from any other cause under its standard procedures, to subsequent invoices submitted under this agreement. Credits should appear on the first invoice submitted after the action resulting in the credits. If no subsequent invoice is submitted, the Contractor shall deliver to the Contracting Officer a check drawn to the order of the office designated for contract administration. The Contractor shall identify the reason for the credit and the applicable term dates in all cases.

4. *Withdrawal of students.* (a) The Government may, at its option and at any time, withdraw financial support for any student by issuing official orders. The Government will furnish _____ copies of the orders to the Contractor within a reasonable time after publication.

(b) The Contractor may request withdrawal by the Government of any student for academic or disciplinary reasons.

(c) If withdrawal occurs before the end of a term, the Government will pay any tuition and fees due for the current term. The Contractor shall credit the Government with any charges eligible for refund under the Contractor's standard procedures for any students in effect on the date of withdrawal.

(d) Withdrawal of students by the Government will not be the basis for any special charge or claim by the Contractor other than charges under the Contractor's standard procedures.

5. *Transcripts.* Within a reasonable time after withdrawal of a student for any reason, or after graduation, the Contractor shall send to the Contracting Officer (or to an address supplied by the Contracting Officer) one copy of an official transcript showing all work by the student at the institution until such withdrawal or graduation.

6. *Student teaching.* The Government does not anticipate the Contractor awarding fellowships and assistantships to students attending school under this agreement. However, for graduate students, should both the student and the Contractor decide it to be in the student's best interests to assist in the institution's teaching program, the Contractor may provide nominal compensation for part-time service. Base the compensation on the Contractor's practices and procedures for other students of similar accomplishment in that department or field. The Contractor shall apply the compensation as a credit against any invoices presented for payment for any period in which the student performed the part-time teaching service.

7. *Termination of agreement.* (a) Either party may terminate this agreement by giving 30 days advance written notice of the effective date of termination. In the event of termination, the Government shall have the right, at its option, to continue to receive educational services for those students already enrolled in the contractor's institution under this agreement until such time that the students complete their courses or curricula or the Government withdraws them from the Contractor's institution. The terms and conditions of this agreement in effect on the effective date of the termination shall continue to apply to such students remaining in the Contractor's institution.

(b) Withdrawal of students under Schedule provision 4 shall not be considered a termination within the meaning of this provision 7.

(c) Termination by either party shall not be the basis for any special charge or claim by the Contractor, other than as provided by the Contractor's standard procedures.

GENERAL PROVISIONS

Use the following clauses in educational service agreements—

1. FAR 52.202–1, Definitions, and add the following paragraphs (d) through (i).

(d) *Term* means the period of time into which the Contractor divides the academic year for purposes of instruction. This includes *semester, trimester, quarter,* or any similar word the Contractor may use.

(e) *Course* means a series of lectures or instructions, and laboratory periods, relating to one specific representation of subject matter, such as Elementary College Algebra, German 401, or Surveying. Normally, a student completes a course in one term and receives a certain number of semester hours credit (or equivalent) upon successful completion.

(f) *Curriculum* means a series of courses having a unified purpose and belonging primarily to one major academic field. It will usually include certain required courses and elective courses within established criteria. Examples include Business Administration, Civil Engineering, Fine and Applied Arts, and Physics. A curriculum normally covers more than one term and leads to a degree or diploma upon successful completion.

(g) *Catalog* means any medium by which the Contractor publicly announces terms and

conditions for enrollment in the Contractor's institution, including tuition and fees to be charged. This includes ''bulletin,'' ''announcement,'' or any other similar word the Contractor may use.

(h) *Tuition* means the amount of money charged by an educational institution for instruction, not including fees.

(i) *Fees* means those applicable charges directly related to enrollment in the Contractor's institution. Unless specifically allowed in the request for services, fees shall not include—

(1) Any permit charge, such as parking and vehicle registration; or

(2) Charges for services of a personal nature, such as food, housing, and laundry.

2. FAR 52.203–1, Officials Not To Benefit.

3. FAR 52.203–3, Gratuities.

4. FAR 52.203–5, Covenant Against Contingent Fees.

5. FAR 52.204–1, Approval of Contract, if required by department/agency procedures.

6. FAR 52.215–2, Audit and Records—Negotiation.

7. FAR 52.215–18, Order of Precedence.

8. Conflicts Between Agreement and Catalog. Insert the following clause—

CONFLICTS BETWEEN AGREEMENT AND CATALOG

If there is any inconsistency between this agreement and any catalog or other document incorporated in this agreement by reference or any of the Contractor's rules and regulations, the provisions of this agreement shall govern.

9. FAR 52.222–3, Convict Labor.

10. Under FAR 22.802, FAR 22.807, and FAR 22.810, use the appropriate clause from FAR 52.222–26, Equal Opportunity.

11. FAR 52.233–1, Disputes.

12. Assignment of Claims. Insert the following clause:

ASSIGNMENT OF CLAIMS

NO CLAIM UNDER THIS AGREEMENT SHALL BE ASSIGNED.

13. FAR 52.252–4, Alterations in Contract, if required by department/agency procedure.

SIGNATURE PAGE

Agreement No. _____

Date _____

The United States of America

BY: _____

(Contracting Officer)

Activity _____

Location _____

(Name of Contractor)

BY: _____

(Title) _____

[56 FR 36424, July 31, 1991, as amended at 60 FR 61599, Nov. 30, 1995]

Subpart 237.73—Services of Students at Research and Development Laboratories

237.7300 Scope.

This subpart prescribes procedures for acquisition of temporary or intermittent services of students at institutions of higher learning for the purpose of providing technical support at Defense research and development laboratories (10 U.S.C. 2360).

237.7301 Definitions.

As used in this subpart—

(a) *Institution of higher learning* means any public or private post-secondary school, junior college, college, university, or other degree granting educational institution that—

(1) Is located in the United States, its possessions, and Puerto Rico;

(2) Has an accredited education program approved by an appropriate accrediting body; and

(3) Offers a program of study at any level beyond high school.

(b) *Nonprofit organization* means any organization described by section 501(c)(3) of title 26 of the U.S.C. which is exempt from taxation under section 501(a) of title 26.

(c) *Student* means an individual enrolled (or accepted for enrollment) at an institution of higher learning before the term of the student technical support contract. The individual shall remain in good standing in a curriculum designed to lead to the granting of a recognized degree, during the term of the contract.

(d) *Technical support* means any scientific or engineering work in support of the mission of the DoD laboratory involved. It does not include administrative or clerical services.

237.7302 General.

Generally, agencies will acquire services of students at institutions of higher learning by contract between a nonprofit organization employing the student and the Government. When it is in the best interest of the Government, contracts may be made directly with students. These services are not subject to the requirements of FAR part 19, FAR 13.105, or DFARS part 219.

Award authority for these contracts is 10 U.S.C. 2304(a)(1) and 10 U.S.C. 2360.

[56 FR 36424, July 31, 1991, as amended at 60 FR 29500, June 5, 1995]

237.7303 Contract clauses.

Contracts made directly with students are nonpersonal service contracts but shall include the clauses at FAR 52.232–3, Payments Under Personal Services Contracts, and FAR 52.249–12, Termination (Personal Services).

Subpart 237.74—Services at Installations Being Closed

SOURCE: 59 FR 36089, July 15, 1994, unless otherwise noted.

237.7400 Scope.

This subpart prescribes procedures for contracting, through use of other than full and open competition, with local governments for police, fire protection, airfield operation, or other community services at military installations to be closed under the Defense Authorization Amendments and Base Closure and Realignment Act (Pub. L. 100–526), as amended, and the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101–510), as amended.

[59 FR 36089, July 15, 1994, as amended at 60 FR 29500, June 5, 1995]

237.7401 Policy.

The authority in 206.302–5(b)(ii) to contract with local governments—

(a) May be exercised without regard to the provisions of 10 U.S.C. Chapter 146, Contracting for Performance of Civilian Commercial or Industrial Type Functions;

(b) May not be exercised earlier than 180 days before the date the installation is scheduled to be closed;

(c) Requires a determination by the head of the contracting activity that the services being acquired under contract with the local government are in the best interests of the Department of Defense.

(d) Includes the requirement of subpart 222.71, Right of First Refusal of Employment, unless it conflicts with the local government's civil service selection procedures.

[59 FR 36089, July 15, 1994, as amended at 60 FR 29500, June 5, 1995]

237.7402 Contract clause.

Use the clause at 252.237–7022, Services at Installations Being Closed, in solicitations and contracts based upon the authority of this subpart.

[59 FR 36089, July 15, 1994, as amended at 60 FR 29500, June 5, 1995]

PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

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Subpart 239.75—Appropriations Act Restrictions

239.7500 Scope of subpart.
239.7501 Major automated information systems restriction.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36429, July 31, 1991, unless otherwise noted.

Subpart 239.70 Exchange or Sale of Information Technology (IT)

SOURCE: 62 FR 1059, Jan. 8, 1997, unless otherwise noted.

239.7000 Scope of subpart.

This subpart contains unique DoD procedures for the exchange or sale of information technology using the exchange authority of the General Services Administration (GSA). This subpart only applies to items with an original acquisition cost of $1,000,000 or more.

239.7001 Policy.

Agencies should consider exchange/sale when replacing Government-owned information technology. Exchange/sale is a method of—

(a) Transferring the equipment to be replaced to—

(1) Another Government agency, with reimbursement (sale); or

(2) The supplier of the replacement information technology for a trade-in allowance (exchange).

(b) Applying the proceeds of sale or the exchange allowance toward the purchase of replacement information technology.

239.7002 Conditions for using exchange/sale.

(a) The requiring activity must make a written determination that—

(1) The trade-in allowance of the exchange or the proceeds of the sale will be applied to acquire the replacement information technology; and

(2) The exchange/sale transaction will foster the economic and efficient accomplishment of a continuing requirement.

(b) The replacement equipment must be information technology—

(1) Similar to the resource being sold or exchanged;

(2) Which will satisfy the continuing requirement currently met by the resource being replaced.

239.7003 Procedures.

(a) Comply with—

(1) This subpart;

(2) Subpart 217.70; and

(3) The Defense Automation Resources Management Manual.

(b) Solicit offers both on an exchange (trade-in for allowance) or no exchange (no trade-in) basis.

(c) Retain the option to exercise any exchange offer at the time of award.

(d) List and describe the information technology to be exchanged in the solicitation. At a minimum include—

(1) A brief description of each item;

(2) Name of manufacturer;

(3) Equipment type;

(4) Model number; and

(5) The condition code and explanation of the code.

(e) Allow sufficient time in the contracting schedule to permit screening within the Government of the information technology to be exchanged prior to contract award.

(f) Immediately upon receipt of offers, determine the highest exchange offer (if any) and use it to initiate screening under the Defense Automation Resources Management Manual.

(1) Send an SF 120, Report of Excess Personal Property, to the Defense Information Systems Agency, Chief Information Officer, Defense Automation Resources Management Program Division, Attn: D03D, 701 South Courthouse Road, Arlington, VA 22204–2199. Prominently display the following note on the original and five copies of the SF 120:

Exchange/''Sale'' Property

A written administrative determination has been (will be) made to apply the exchange allowance or proceeds of ''sale'' to the acquisition of similar items.

(2) Include the following additional information with the SF 120:

(i) The identity of the offeror of the exchange;

(ii) The type of replacement equipment;

(iii) The acquisition method for the replacement equipment;

(iv) The anticipated purchase price for the replacement equipment; and

(v) The name and telephone number of the contracting officer.

(g) Evaluate offers using the solicitation criteria, including consideration of any exchange allowance offers. Award can be made whether or not the replaced information technology is exchanged.

(h) Before a contract is awarded, consider the results of the screening. Do not make an exchange if another Government agency wants to acquire the replaced equipment.

(1) If another agency is going to acquire the replaced equipment, do not include the exchange allowance in the contract price.

(2) The actual sale price to the agency acquiring the replaced equipment will be the exchange allowance (if any) of the successful offeror.

(i) If no Government agency wants to acquire the replaced equipment, the contract price shall include the exchange allowance, if any.

(j) If no exchange allowance was offered by the successful contractor, see the Defense Automation Resources Management Manual for disposal instructions.

[62 FR 1059, Jan. 8, 1997, as amended at 62 FR 34127, June 24, 1997; 62 FR 49305, Sept. 19, 1997]

Subpart 239.71—Security and Privacy for Computer Systems

239.7100 Scope of subpart.

This subpart applies to all acquisitions for computer systems. It covers both security and Privacy Act considerations.

239.7101 General.

Security requirements are in addition to provisions concerning protection of privacy of individuals (see FAR subpart 24.1).

239.7102 Security against compromising emanations.

239.7102–1 General.

(a) The National Security or Atomic Energy Acts, as amended, may require protection of information that is—

(1) Processed;

(2) Transmitted;

(3) Stored;

(4) Retrieved; or

(5) Displayed.

(b) When acquiring computer equipment to be used to process classified information, the contracting officer shall obtain from the requiring activity—

(1) A determination as to whether the equipment must provide protection against compromising emanations; and

(2) Identification of an established National TEMPEST standard (e.g., NACSEM 5100, NACSIM 5100A) or a standard used by other authority.

(c) When contracts will require the use of FIP resources involving classified data, programs, etc., the contracting officer shall obtain from the requiring activity—

(1) Advice to whether to require contractors performing these services to use equipment meeting the requirements in paragraph (a) of this subsection (as prescribed in the clause at 252.239–7000, Protection Against Compromising Emanations;

(2) Information concerning any requirement for marking of TEMPEST—certified equipment (especially if to be reused); and

(3) Information on how to validate TEMPEST equipment compliance with required standards.

239.7102–2 Validation of TEMPEST compliance.

Include requirements for validation of TEMPEST compliance in section E (Inspection and Acceptance) of the contract.

239.7102–3 Contract clause.

When contracting for computer equipment or systems that are to be used to process classified information, use the clause at 252.239–7000, Protection Against Compromising Emanations.

[62 FR 34127, June 24, 1997]

Subpart 239.72—Standards

239.7200 Scope of subpart.

This subpart contains guidance for implementing—

(a) Federal Information Processing Standards (FIPS); and

(b) Federal Telecommunications Standards (FED-STD).

239.7201 [Reserved]

239.7202 Waivers.

(a) The Secretary of Commerce has delegated to the Secretary of Defense the authority to waive FIP standards, in accordance with procedures established by the Secretary of Commerce. The Secretary of Defense redelegated that waiver authority to the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASD(C3I)). The ASD(C3I) has redelegated to the senior information technology official of each military department the authority to approve waivers to FIP standards that are applicable to military department requirements. Waivers to FIP standards that are applicable to the requirements of DoD components outside the military departments must be approved by the ASD(C3I).

(b) Contracting officers shall ensure that all applicable FIP standards are incorporated into solicitations, except for those FIP standards for which the requiring activity has obtained a waiver from the appropriate military department or DoD senior information technology official.

(c) As part of the Commerce Business Daily synopsis of a solicitation, contracting officers shall publish a notice of any determinations to waive any FIP standards that are applicable to the solicitation. If the waiver determination is made after the notice of the solicitation is published, the contracting officer shall amend the notice to announce the waiver determination.

[56 FR 36429, July 31, 1991, as amended at 62 FR 1060, Jan. 8, 1997]

Subpart 239.73—Acquisition of Automatic Data Processing Equipment by DoD Contractors

239.7300 Scope of subpart.

This subpart prescribes approval requirements for automatic data processing equipment (ADPE) purchased by contractors for use in performing DoD contracts.

[62 FR 9376, Mar. 3, 1997]

239.7301 Applicability.

(a) This subpart applies when the contractor purchases ADPE and title will pass to the Government.

(b) This subpart does not apply to ADPE acquired as a component of an end item.

[56 FR 36429, July 31, 1991, as amended at 62 FR 9376, Mar. 3, 1997]

239.7302 Approvals and screening.

(a) The requirements of this section highlight the redistribution requirements of the Defense Automation Resources Management Manual, and are in addition to those at FAR 45.302.

(b) If the contractor proposes acquiring ADPE subject to 239.7301, and the unit acquisition cost is $50,000 or more—

(1) The contracting officer shall require the contractor to submit, through the administrative contracting officer, the documentation in 239.7303.

(2) The administrative contracting officer—

(i) Submits a request for screening the requirement against the pool of Government-owned ADPE to determine if available excess equipment could satisfy the contractor's needs. The request should include the contractor's supporting documentation. The request is sent to—

Defense Information Systems Agency, Chief Information Officer, Defense Automation Resources Management Program Division,

Attn: D03D, 701 South Courthouse Road, Arlington, VA 22204–2199; or

(ii) Uses the Automation Resources Management System (ARMS) to screen on-line. System access may be requested from the Defense Information Systems Agency, Chief Information Officer, Defense Automation Resources Management Program (DARMP) Division. Customers may apply for an ARMS Account Number by calling the DARMP Help Desk at (703) 696–1904; DSN 426–1904, FAX (703) 696–1908; E-mail DARMP@NCR.DISA.MIL.

(iii) Documents the result of the System query.

(iv) Upon receipt of and based on screening results from DARMP, advises the contractor that excess ADPE—

(A) Is available pursuant to the Defense Automation Resources Management Manual; or

(B) Is not available and the contractor may proceed with acquisition of the equipment.

(3) The contracting officer—

(i) Reviews the contractor's documentation;

(ii) Decides whether to authorize the acquisition; and

(iii) Advises—

(A) The contractor if authorization is not granted; and

(B) The administrative contracting officer if authorization is granted.

[56 FR 36429, July 31, 1991, as amended at 62 FR 1060, Jan. 8, 1997; 62 FR 9376, Mar. 3, 1997; 62 FR 34127, June 24, 1997]

239.7303 Contractor documentation.

Contracting officers may tailor the documentation requirements in paragraphs (a) through (d) of this section.

(a) *List of existing ADPE and an analysis of its use.* (1) List of each component identified by manufacturer, type, model number, location, date of installation, and how acquired (lease, purchase, Government-furnished). Identify those acquired specifically to perform a Government contract.

(2) Reliability and usage data on each component for the past 12 months.

(3) Identification of users supported by each component, including how much time each user requires the component and the related contract or task involved.

(b) *List of new ADPE needed and reasons why it is needed.* (1) Estimates of the new equipment's useful life.

(2) List of tasks the new equipment is needed for and why, including estimated monthly usage for each major task or project.

(3) Anticipated software and telecommunications requirements.

(c) *Selection of computer equipment.* (1) If the acquisition is competitive—

(i) List sources solicited and proposals received;

(ii) Show how the evaluation was performed; and

(iii) Provide an explanation if the selected offer is not the lowest evaluated offer.

(2) If the acquisition is not competitive, state why.

(d) *Cost.* State the ADPE cost.

[62 FR 9376, Mar. 3, 1997]

Subpart 239.74—Telecommunications Services

239.7400 Scope.

This subpart prescribes policy and procedures for acquisition of telecommunications services and maintenance of telecommunications security. Telecommunications services may also meet the definition of information technology.

[62 FR 1060, Jan. 8, 1997]

239.7401 Definitions.

As used in this subpart—

(a) *Common carrier* means any entity engaged in the business of providing telecommunications services which are regulated by the Federal Communications Commission or other governmental body.

(b) *Foreign carrier* means any person, partnership, association, joint-stock company, trust, governmental body, or corporation not subject to regulation by a U.S. governmental regulatory body and not doing business as a citizen of the United States, providing telecommunications services outside the territorial limits of the United States.

(c) *Governmental regulatory body* means the Federal Communications Commission, any statewide regulatory

body, or any body with less than statewide jurisdiction when operating under the State authority. The following are not ''governmental regulatory bodies''—

(1) Regulatory bodies whose decisions are not subject to judicial appeal; and

(2) Regulatory bodies which regulate a company owned by the same entity which creates the regulatory body.

(d) *Noncommon carrier* means any entity other than a common carrier offering telecommunications facilities, services, or equipment for lease.

(e) *Security, sensitive information,* and *telecommunications systems* have the meaning given in the clause at 252.239–7016, Telecommunications Security Equipment, Devices, Techniques, and Services.

(f) *Telecommunications* means the transmission, emission, or reception of signals, signs, writing, images, sounds, or intelligence of any nature, by wire, cable, satellite, fiber optics, laser, radio, or any other electronic, electric, electromagnetic, or acoustically coupled means.

(g) *Telecommunications services* means the services acquired, whether by lease or contract, to meet the Government's telecommunications needs. The term includes the telecommunications facilities and equipment necessary to provide such services.

239.7402 Policy.

(a) *Acquisition*. (1) DoD policy is to acquire telecommunications services from common and noncommon telecommunications carriers—

(i) On a competitive basis, except when acquisition using other than full and open competition is justified.

(ii) Recognizing the regulations, practices, and decisions of the Federal Communications Commission (FCC) and other governmental regulatory bodies on rates, cost principles, and accounting practices;

(iii) Making provision in telecommunications services contracts for adoption of—

(A) FCC approved practices; or

(B) The generally accepted practices of the industry on those issues concerning common carrier services where—

(*1*) The governmental regulatory body has not expressed itself;

(*2*) The governmental regulatory body has declined jurisdiction; or

(*3*) There is no governmental regulatory body to decide.

(2) DoD's unique consumer needs in both volume and technology require DoD to participate actively in the rule making process of cognizant governmental regulatory bodies. DoD also must work with the government regulatory bodies and common carriers to be sure that in those areas in which the FCC cannot or will not rule, sound regulatory practices are followed. DoD should make every effort to avoid the time and expense of litigation by full and fair disclosure of both the carrier's and the DoD's position in advance.

(3) If actions do not produce reasonable or lawful rates, or when there is a refusal to provide required services or file appropriate tariffs, DoD should litigate. All contracts with the regulatory bodies should be through counsel under department/agency and Defense Information Systems Agency procedures.

(b) *Security*. (1) The contracting officer shall ensure, in accordance with agency procedures, that purchase requests identify—

(i) The nature and extent of information requiring security during telecommunications;

(ii) The requirement for the contractor to secure telecommunications systems;

(iii) The telecommunications security equipment, devices, techniques, or services with which the contractor's telecommunications security equipment, devices, techniques, or services must be interoperable; and

(iv) The approved telecommunications security equipment, devices, techniques, or services, such as found in the National Security Agency's Information Systems Security Products and Services Catalogue.

(2) Contractors and subcontractors shall provide all telecommunications security techniques or services required for performance of Government contracts.

(3) Except as provided in paragraph (b)(4) of this subsection, contractors

and subcontractors shall normally provide all required telecommunications security equipment or devices as plant equipment in accordance with FAR part 45. In some cases, such as for communications security (COMSEC) equipment designated as controlled cryptographic item (CCI), contractors or subcontractors must also meet ownership eligibility conditions.

(4) When the contractor or subcontractor does not meet ownership eligibility conditions, the head of the agency may authorize provision of the necessary facilities as Government-furnished property or acquisition as contractor-acquired property, as long as conditions of FAR 45.303 are met.

[56 FR 36429, July 31, 1991, as amended at 56 FR 67220, Dec. 30, 1991; 62 FR 1060, Jan. 8, 1997]

239.7403 Regulatory bodies.

The FCC and other governmental regulatory bodies publish rules and regulations on the operations of common carriers and prescribe accounting principles to use to establish rates.

239.7404 Foreign carriers.

(a) Frequently, foreign carriers are owned by the government of the country in which they operate. The foreign governments often prescribe the methods of doing business. In many countries, an international agreement with the host country sets guidelines for acquiring communication services. In some countries, a corporate subsidiary of a carrier not indigenous to the country (often a U.S. parent) is the sole source for telecommunications services.

(b) Contracts for telecommunications services in foreign countries should describe rates and practices in as much detail as possible. It is DoD policy not to pay discriminatory rates. DoD should pay a reasonable rate for telecommunications services or the rate charged the military of that country, whichever is less.

(c) Refer special problems with telecommunications acquisition in foreign countries to higher headquarters for resolution with appropriate State Department representatives.

239.7405 Authority to contract for telecommunications services.

(a) The General Services Administration (GSA) has exclusive procurement authority for telecommunications services that meet the definition of Federal information processing resources in FIRMR 201–4 and that meet the applicability criteria in FIRMR 201–1. However, GSA may authorize agencies to contract for telecommunications services in certain instances under a delegation of GSA's exclusive procurement authority (see FIRMR 201–20.305).

(b) Under FIRMR 201–20.306, GSA authorizes the senior information resources management (IRM) officials of each military department and the senior IRM official of DoD to enter into multiyear contracts for telecommunications services under certain conditions. Contracting activities may enter into multiyear contracts for telecommunications services if—

(1) The senior IRM official has redelegated to the contracting office, GSA's exclusive procurement authority for FIP sources;

(2) The contract life, including options, does not exceed ten years; and

(3) The contracting activity complies with OMB budget and accounting procedures relating to appropriated funds.

(c) The senior IRM officials are—

(1) *Army*. The Assistant Secretary of the Army (Research, Development, and Acquisition);

(2) *Navy*. The Assistant Secretary of the Navy (Research, Development, and Acquisition);

(3) *Air Force*. The Assistant Secretary of the Air Force (Acquisition); and

(4) *The defense agencies*. Assistant Secretary of Defense for Command, Control, Communications, and Intelligence.

(d) The ten year authority in paragraph (b) of this section applies to communications service authorizations (239.7407–2) and other types of telecommunications contracts. It does not apply to basic agreements.

239.7406 Cost or pricing data and information other than cost or pricing data.

(a) Common carriers are not required to submit cost or pricing data before

award of contracts for tariffed services. Rates or preliminary estimates quoted by a common carrier for tariffed telecommunications services are considered to be prices set by regulation within the provisions of 10 U.S.C. 2306a. This is true even if the tariff is set after execution of the contract.

(b) Rates or preliminary estimates quoted by a common carrier for nontariffed telecommunications services or by a noncommon carrier for any telecommunications service are not considered prices set by law or regulation.

(c) Contracting officers shall obtain sufficient information to determine that the prices are reasonable. For example, cost or pricing data, if required in accordance with FAR 15.804–2, or information other than cost or pricing data, if required in accordance with FAR 15.804–5, may be necessary to support the reasonableness of—

(1) Nontariffed services;

(2) Special rates and charges not included in a tariff, whether filed or to be filed;

(3) Special assembly rates and charges;

(4) Special construction and equipment charges;

(5) Contingent liabilities that are fixed at the outset of the service;

(6) Proposed cancellation and termination charges under the clause at 252.239–7007, Cancellation or Termination of Orders—Common Carriers, and reuse arrangements under the clause at 252.239–7008, Reuse Arrangements;

(7) Rates contained in voluntary tariffs filed by nondominant common carriers; or

(8) A tariff, whether filed or to be filed, for new services installed or developed primarily for Government use.

[62 FR 40473, July 29, 1997]

239.7407–1 General.

In addition to acquisition methods described in the FAR, the method described in this section may be used to acquire telecommunications services.

239.7407–2 Communication service authorizations (CSAs).

Basic agreements (see FAR 16.702) are used widely in conjunction with communication service authorizations to facilitate award of telecommunications services.

(a) Use DD Form 428, Communication Service Authorization (CSA), or an electronic data processing substitute to award, modify, cancel, or terminate telecommunications services. The CSA shall—

(1) Refer to the basic agreement;

(2) Specify the types and quantities and equipment to be provided as well as the tariff (or other price if a tariff is not available) of those services and equipment;

(3) Specify the premises involved;

(4) Cite the address for billing;

(5) Identify the disbursing office; and

(6) Provide funding information.

(b) Before awarding a CSA, comply with the requirements in FAR and DFARS, e.g., for competition, reviews, approvals, and determinations and findings.

(c) Include an expiration date in each CSA.

(d) Modify CSAs to reflect any price increases.

239.7408 Special construction.

239.7408–1 General.

(a) Special construction normally involves a common carrier giving a special service or facility related to the performance of the basic telecommunications service requirements.

This may include—

(1) Moving or relocating equipment;

(2) Providing temporary facilities;

(3) Expediting provision of facilities; or

(4) Providing specially constructed channel facilities to meet Government requirements.

(b) Use this subpart instead of FAR part 36 for acquisition of ‘‘special construction.’’

(c) Special construction costs may be—

(1) A contingent liability for using telecommunications services for a shorter time than the minimum to reimburse the contractor for unamortized nonrecoverable costs. These costs are usually expressed in terms of a termination liability, as provided in the contract or by tariff;

(2) A onetime special construction charge;

(3) Recurring charges for constructed facilities;

(4) A minimum service charge;

(5) An expediting charge; or

(6) A move or relocation charge.

(d) When a common carrier submits a proposal or quotation which has special construction requirements, the contracting officer shall require a detailed special construction proposal. Analyze all special construction proposals to—

(1) Determine the adequacy of the proposed construction;

(2) Disclose excessive or duplicative construction; and

(3) When different forms of charge are possible, provide for the form of charge most advantageous to the Government.

(e) When possible, analyze and approve special construction charges before receiving the service. Impose a ceiling on the special construction costs before authorizing the contractor to proceed, if prior approval is not possible. Do not make final payment for special construction charges unless the charges are approved by the contracting officer.

239.7408–2 Applicability of construction labor standards for special construction.

(a) The construction labor standards in FAR 22.4 ordinarily do not apply to special construction. However, if the special construction includes construction (as defined in FAR 36.102) of a public building or public work, the construction labor standards may apply. Determine applicability under FAR 22.402.

(b) Each CSA or other type contract which is subject to construction labor standards under FAR 22.402 shall cite that fact.

239.7409 Special assembly.

(a) Special assembly is the designing, manufacturing, arranging, assembling, or wiring of equipment to provide telecommunications services that cannot be provided with general use equipment.

(b) Special assembly rates and charges shall be based on estimated costs. The contracting officer shall negotiate special assembly rates and charges before starting service whenever possible. When it is not possible to negotiate in advance, use provisional rates and charges subject to adjustment, until final rates and charges are negotiated. The CSAs authorizing the special assembly shall be modified to reflect negotiated final rates and charges.

239.7410 Cancellation and termination.

(a)(1) Cancellation is stopping a requirement after placing of an order but before service starts.

(2) Termination is stopping a requirement after placing an order and after service starts.

(b) Determine cancellation or termination charges under the provisions of the applicable tariff or agreement/contract.

239.7411 Contract clauses.

(a) In addition to other appropriate FAR and DFARS clauses, use the following clauses in solicitations, contracts, and basic agreements for telecommunications services. Modify the clauses only if necessary to meet the requirements of a governmental regulatory agency—

(1) 252.239–7002, Access;

(2) 252.239–7003, Facilities and Services to be Furnished—Common Carriers;

(3) 252.239–7004, Orders for Facilities and Services—Common Carriers;

(4) 252.239–7005, Rates, Charges, and Services—Common Carriers;

(5) 252.239–7006, Tariff Information;

(6) 252.239–7007, Cancellation or Termination of Orders—Common Carriers;

(7) 252.239–7008, Reuse Arrangements.

(b) Use the following clauses in solicitations, contracts, and basic agreements for telecommunications services when the acquisition includes or may include special construction. Modify the clauses only if necessary to meet the requirements of a governmental regulatory agency—

(1) 252.239–7011, Special Construction and Equipment Charges; and

(2) 252.239–7012, Title to Telecommunication Facilities and Equipment.

(c) Use the following clauses in basic agreements for telecommunications services—

(1) 252.239–7013, Obligation of the Government;
(2) 252.239–7014, Term of Agreement, and insert the effective date of the agreement in paragraph (a) of the clause; and
(3) 252.239–7015, Continuation of Communication Service Authorizations, as appropriate, and insert in paragraph (a) of the clause, the name of the contracting office and the basic agreement or contract number which is being superseded.

(d) Use the clause at 252.239–7016, Telecommunications Security Equipment, Devices, Techniques, and Services, in solicitations and contracts when performance of a contract requires a securing telecommunications.

[56 FR 36429, July 31, 1991, as amended at 57 FR 42632, Sept. 15, 1992; 62 FR 40473, July 29, 1997]

Subpart 239.75—Appropriations Act Restrictions

SOURCE: 57 FR 14995, Apr. 23, 1992, unless otherwise noted.

239.7500 Scope of subpart.

This subpart contains restrictions on the acquisition of information technology, imposed by Defense appropriations acts.

[57 FR 14995, Apr. 23, 1992, as amended at 62 FR 34127, June 24, 1997]

239.7501 Major automated information systems restriction.

Section 8028 of the FY 1992 Defense Appropriations Act (Pub. L. 102–172) and similar sections of the FY 1993, FY 1994, and FY 1995 Defense appropriations acts prohibit use of DoD appropriations for acquisition of major automated information systems, unless the systems have successfully completed oversight reviews required by DoD regulations.

[62 FR 1060, Jan. 8, 1997]

PART 241—ACQUISITION OF UTILITY SERVICES

Sec.
241.001 Definitions.
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241.004 Acquiring utility services.
241.004–1 Policy.
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241.004–3 GSA assistance and approval.
241.004–5 Separate contracts.
241.005 Pre-award contract review.
241.007 Contract clauses.
241.007–70 Additional clauses.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36435, July 31, 1991, unless otherwise noted.

241.001 Definitions.

As used in this part—

Definite term contract means a contract for utility services for a definite period of not less than one nor more than ten years.

Dual service area means a geographical area in which two or more utility suppliers are authorized under State law to provide services.

Indefinite term contract means a month-to-month contract for utility services which may be terminated by the Government upon proper notice.

Independent regulatory body means the Federal Energy Regulatory Commission, a state-wide agency, or an agency with less than state-wide jurisdiction when operating pursuant to state authority. The body has the power to fix, establish, or control the rates and services of utility suppliers.

Nonindependent regulatory body means a body that regulates a utility supplier which is owned or operated by the same entity that created the regulatory body, e.g., a municipal utility.

Regulated utility supplier means a utility supplier regulated by an independent regulatory body.

Service power procurement officer means for the—

Army, the Chief of Engineers;

Navy, the Commander, Naval Facilities Engineering Command;

Air Force, the head of a contracting activity; and

Defense Logistics Agency, the Executive Director of Contracting.

241.002 Applicability.

(a) This part applies to purchases of utility services from nonregulated and regulated utility suppliers. It includes the acquisition of liquified petroleum gas as a utility service when purchased from regulated utility suppliers.

(b)(7) This part does not apply to third party financed projects. However,

it may be used for any purchased utility services directly resulting from such projects, including those authorized by—

(A) 10 U.S.C. 2394 for energy, fuels, and energy production facilities for periods not to exceed 30 years;

(B) 10 U.S.C. 2394(a) for renewable energy for periods not to exceed 25 years;

(C) 10 U.S.C. 2689 for geothermal resources that result in energy production facilities;

(D) 10 U.S.C. 2809 for potable and waste water treatment plants for periods not to exceed 32 years; and

(E) 10 U.S.C. 2812 for lease/purchase of energy production facilities for periods not to exceed 32 years.

241.004 Acquiring utility services.

241.004–1 Policy.

(1) Except as provided in FAR 41.004, DoD, as a matter of comity, will comply with the current regulations, practices and decisions of independent regulatory bodies which are subject to judicial appeal. This policy does not extend to regulatory bodies whose decisions are not subject to appeal nor does it extend to nonindependent regulatory bodies.

(2) Purchases of utility services outside the U.S. may use—

(i) Formats and technical provisions consistent with local practice; and

(ii) Dual language forms and contracts.

(3) Rates established by an independent regulatory body are considered ''prices set by law or regulation'' and do not require submission of cost or pricing data (see FAR subpart 15.8).

241.004–2 Procedures.

(a)(i) *Competitive proposals.* When a new major utility service load develops or a new military installation is established, the contracting officer shall—

(A) Determine whether more than one supplier can provide the required utility services.

(*1*) Competition may be possible where dual franchises exist or where no franchise exists.

(*2*) Competition should also be considered when an installation is served by one supplier and other potential suppliers exist even though one supplier has entered into a General Services Administration area-wide contract.

(B) Where competition exists, solicit competitive proposals from all potential suppliers.

(ii) *Periodic reviews for competition.* Conduct periodic review of ongoing contracts to determine the availability of competition. If available, evaluate the need to rewrite the contract considering—

(A) The possible loss of rights vested in the Government under the existing contract;

(B) The age and quality of the contract; and

(C) The number of contract modifications and the ease of administration with the existing contract documents.

(iii) *Connection and service charges.* The Government may pay a connection charge when required to cover the cost of the necessary connecting facilities. A connection charge based on the estimated labor cost of installing and removing the facility shall not include salvage cost. A lump-sum connection charge shall be no more than the agreed cost of the connecting facilities less net salvage. The order of precedence for contractual treatment of connection and service charges is—

(A) No connection charge.

(B) *Termination liability.* Use when an obligation is necessary to secure the required services. The obligation must be not more than the agreed connection charge, less any net salvage material costs. Use of a termination liability instead of a connection charge requires the approval of the service power procurement officer or designee.

(C) *Connection charge, refundable.* Use a refundable connection charge when the supplier refuses to provide the facilities based on lack of capital or published rules which prohibit providing up-front funding. The contract should provide for refund of the connection charge within five years unless a longer period or omission of the refund requirement is authorized by the service power procurement officer or designee.

(D) *Connection and service charges, nonrefundable.* The Government may

pay certain nonrefundable, nonrecurring charges including service initiation charges, a contribution in aid of construction, membership fees, and charges required by the supplier's rules and regulations to be paid by the customer. If possible, consider sharing with other than Government users the use of (and costs for) facilities when large nonrefundable charges are required.

(iv) *Construction and labor requirements.* (A) Do not use the connection charge provisions for the installation of Government-owned distribution lines and facilities. The acquisition of such facilities must be authorized by legislation and accomplished in accordance with FAR part 36. Also, do not use the connection charge provisions for the installation of new facilities related to the supplier's production and general ''backbone'' system unless authorized by legislation.

(B) Construction labor standards ordinarily do not apply to construction accomplished under the connection charge provisions of this part. However, if installation includes construction of a public building or public work as defined in FAR 36.102, construction labor standards may apply.

241.004–3 GSA assistance and approval.

The General Services Administration (GSA) has delegated DoD authority to enter into utility service contracts (FAR 41.003(b)); thus, contracting officers need not seek assistance or approval from GSA.

241.004–5 Separate contracts.

(a)(i) Requests for proposals shall state the anticipated service period in terms of months or years. Where the period extends beyond the current fiscal year, evaluate offers of incentives for a definite term contract.

(ii) The solicitation may permit offerors the choice of proposing on the basis of—

(A) A definite term not to exceed the anticipated service period; or

(B) An indefinite term contract.

(iii) Where the expected service period is less than the current fiscal year, the solicitation shall be on the basis of an indefinite term contract.

(iv) Contracts for utility services for leased premises shall identify the lease document on the face of the contract.

(d) Use an indefinite term utility service contract when it is considered to be in the Government's best interest to—

(i) Have the right to terminate on a 30-day (or longer) notice. A notice of up to one year may be granted by an installation if needed to obtain a more favorable rate, more advantageous conditions, or for other valid reasons; or

(ii) Grant the supplier the right to terminate the contract when of benefit to the Government in the form of lower rates, larger discounts or more favorable terms and conditions.

241.005 Pre-award contract review.

(d) Departments/agencies shall conduct their own pre-award contract reviews. FAR 41.005 (a) through (c) may be used as a guide.

241.007 Contract clauses.

241.007–70 Additional clauses.

(a) If the Government must execute a superseding contract and capital credits, connection charge credits, or termination liability exist, use the clause at 252.241–7000, Superseding Contract.

(b) Use the clause at 252.241–7001, Government Access, when the clause at FAR 52.241–4, Contractor's Facilities, is used.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 242—CONTRACT ADMINISTRATION

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AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36437, July 31, 1991, unless otherwise noted.

Subpart 242.1—Interagency Contract Administration and Audit Services

242.101 Policy.

(a) Foreign governments and international organizations may request contract administration services on their direct purchases from U.S. producers. Direct purchase is the purchase of defense supplies in the United States through commercial channels for use by the foreign government or international organization.

(d)(i) DoD requires reimbursement, at a rate set by the Under Secretary of Defense (Comptroller/Chief Financial Officer), from non-DoD organizations, except for—

(A) Quality assurance, contract administration, and audit services provided under a no-charge reciprocal agreement;

(B) Services performed under subcontracts awarded by the Small Business Administration under FAR subpart 19.8; and

(C) Quality assurance and pricing services performed for the Supply and Services Canada.

(ii) Departments and agencies may request an exception from the reimbursement policy in paragraph (d)(i) of this section from the Under Secretary of Defense (Comptroller/Chief Financial Officer). A request must show that an exception is in the best interest of the Government.

(iii) Departments and agencies must pay for services performed by non-DoD activities, foreign governments, or international organizations, unless otherwise provided by reciprocal agreements.

[56 FR 36437, July 31, 1991, as amended at 62 FR 34127, June 24, 1997]

242.102 Procedures.

(b)(i) Supply and Services Canada (SSC) is permitted to submit its requests for contract administration services directly to the cognizant contract administration office.

(ii) Other foreign governments (including Canadian government organizations other than SSC) and international organizations send their requests for contract administration services to the DoD Central Control Point (CCP) at the Defense Contract Management Command (DCMC), New York, NY. Contract administration offices provide services only upon request from the CCP. The CCP shall—

(A) Determine whether the request is from a friendly foreign government or an international agency in which the United States is a participant;

(B) Determine whether the services are consistent with the DoD mutual security program policies (the Assistant Secretary of Defense (International Security Affairs) is the source of information for questions as to the eligibility of foreign governments to receive services);

(C) Ensure that the reimbursement arrangements are consistent with 242.101(d);

(D) Coordinate with appropriate contract administration offices to determine whether DoD can provide the services;

(E) Notify the requestor that the request is accepted, or provide reasons why it cannot be accepted;

(F) Distribute the acquisition documents and related materials to contract administration offices; and

(G) Receive statements of costs incurred by contract administration offices for reimbursable services and forward them for billing to the Security Assistance Accounting Center.

[56 FR 36437, July 31, 1991, as amended at 62 FR 34127, June 24, 1997]

Subpart 242.2—Assignment of Contract Administration

242.200 Scope of subpart.

This subpart does not address the contract administration role of a contracting officer's representative (see 201.602).

242.203 Retention of contract administration.

(a)(i) DoD activities shall not retain any contract for administration that requires performance of any contract administration function at or near contractor facilities, except contracts for—

(A) The National Security Agency;

(B) Research and development with universities;

(C) Flight training;

(D) Consultant support services;

(E) Mapping, charting, and geodesy services;

(F) Base, post, camp, and station purchases;

(G) Operation or maintenance of, or installation of equipment at radar or communication network sites;

(H) Communications services;

(I) Installation, operation, and maintenance of space-track sensors and relays;

(J) Dependents Medicare program contracts;

(K) Stevedoring contracts;

(L) Construction and maintenance of military and civil public works, including harbors, docks, port facilities, military housing, development of recreational facilities, water resources, flood control, and public utilities;

(M) Architect-engineer services;

(N) Airlift and sealift services (Military Airlift Command and Military Sealift Command may perform contract administration services at contractor locations involved solely in performance of airlift or sealift contracts);

(O) Subsistence supplies;

(P) Ballistic missile sites (contract administration offices may perform supporting administration of these contracts at missile activation sites during the installation, test, and checkout of the missiles and associated equipment);

(Q) Operation and maintenance of, or installation of equipment at, military test ranges, facilities, and installations; and

(R) Purchase orders issued via written telecommunications (See FAR 13.506).

(ii) Contract administration functions for base, post, camp, and station contracts on a military installation are normally the responsibility of the installation or tenant commander. However, the Defense Contract Management Command (DCMC) shall, upon request of the military department, and subject to prior agreement, perform contract administration services on a military installation.

(iii) DCMC shall provide preaward survey assistance for post, camp, and station work performed on a military installation. The contracting office and the DCMC preaward survey monitor should jointly determine the scope of the survey and individual responsibilities.

(iv) To avoid duplication, contracting offices shall not locate their personnel at contractor facilities, except—

(A) In support of contracts retained for administration in accordance with paragraph (a)(i) of this section; or

(B) As permitted under subpart 242.74.

[56 FR 36437, July 31, 1991, as amended at 61 FR 7749, Feb. 29, 1996]

242.204 Supporting contract administration.

(a) In special circumstances, a contract administration office may request support from a component not listed in the DoD Directory of Contract Administration Services Components (DLAH 4105.4). An example is where the contractor's work site is on a military base and a base organization is asked to provide support. Before formally sending the request, coordinate with the office concerned to ensure that resources are available for, and capable of, providing the support.

(b) When requesting support on a subcontract which includes foreign military sale (FMS) requirements, the contract administration office shall—

(i) Mark ''FMS Requirement'' on the face of the documents;

(ii) For each FMS case involved, provide the FMS case identifier, associated item quantities, DoD prime contract number, and prime contract line/subline item number.

242.205 Designation of the paying office.

(1) For contracts assigned to the Defense Contract Management Command (DCMC), designate as the paying office—

(i) The cognizant Defense Finance and Accounting Service (DFAS) payment office as specified in the DoD Directory of Contract Administration Services Components (DLAH section 4105.4), for contracts funded with DoD funds;

(ii) The department or agency payment office if authorized by defense financial management regulations or if the contract is funded with non-DoD funds; or

(iii) Multiple paying offices under paragraphs (1)(i) and (ii) of this section—if the contract is funded with both DoD and non-DoD funds.

(2) For contracts not assigned to DCMC, select a paying office or offices under department/agency procedures.

[56 FR 36437, July 31, 1991, as amended at 57 FR 53601, Nov. 12, 1992; 59 FR 27673, May 27, 1994]

Subpart 242.3—Contract Administration Office Functions

242.301 General.

Contract administration services performed outside the U.S. should be performed in accordance with FAR 42.301 unless there are no policies and procedures covering a given situation. In this case, coordinate proposed actions with the appropriate U.S. country teams or commanders of unified and specified commands.

242.302 Contract administration functions.

(a)(4) Also, review and evaluate—

(A) Contractor estimating systems (see FAR 15.811); and

(B) Contractor material management and accounting systems under subpart 242.72.

(7) See 242.7503 for ACO responsibilities with regard to receipt of an audit report identifying significant accounting system or related internal control deficiencies.

(8) Monitor contractor costs under subpart 242.70.

(9) For additional contract administration functions related to IR&D/B&P projects performed by major contractors, see 242.771–3(a).

(19) Also negotiate and issue contract modifications reducing contract prices in connection with the provisions of paragraph (b) of the clause at FAR 52.225–10, Duty-Free Entry, and paragraph (c) of the clause at 252.225–7009, Duty-Free Entry—Qualifying Country End Products and Supplies.

(33) Also perform industrial readiness and mobilization production planning field surveys and negotiate schedules.

(39) See 223.370 for safety requirements on contracts for ammunition and explosives.

(41) The Defense Contract Management Command (DCMC) has responsibility for reviewing earned value management system (EVMS) plans and verifying initial and continuing contractor compliance with DoD EVMS criteria.

(67) Also support program offices and buying activities in precontractual efforts leading to a solicitation or award.

(S–70) Serve as the single point of contact for all Single Process Initiative (SPI) Management Council activities. The ACO shall negotiate and execute facilitywide class modifications and agreements for SPI processes, when authorized by the affected components.

(b)(S–70) Issue, negotiate and execute orders under basic ordering agreements for overhaul, maintenance and repair.

[56 FR 36437, July 31, 1991, as amended at 57 FR 53601, Nov. 12, 1992; 60 FR 29500, June 5, 1995; 61 FR 50454, Sept. 26, 1996; 62 FR 9991, Mar. 5, 1997; 62 FR 44224, Aug. 20, 1997]

Subpart 242.4—Correspondence and Visits

242.402 Visits to contractors' facilities.

(a) If a visit to a contractor facility will require access to classified information, the visitors must give the contractor advance written notice (DoD 5220.22–R, Industrial Security Regulation).

Subpart 242.5—Postaward Orientation

242.503 Postaward conferences.

242.503–2 Postaward conference procedure.

Use the conference program outlined on the DD Form 1484, Post-Award Conference Record, in conducting the conference.

242.503–3 Postaward conference report.

The DD Form 1484, Post-Award Conference Record, may be used for this report.

242.570 Contract clause.

Use the clause at 252.242–7000, Postaward Conference, in solicitations and contracts.

Subpart 242.6—Corporate Administrative Contracting Officer

242.602 Assignment and location.

(c)(2) If the agencies cannot agree, refer the matter to the Director of Defense Procurement.

Subpart 242.7—Indirect Cost Rates

242.704 Billing rates.

(c) The administrative contracting officer or auditor shall periodically review billing rates for continued applicability. Billing rates should be established on a year-to-year basis.

242.705 Final indirect cost rates.

242.705–1 Contracting officer determination procedure.

(a) *Applicability and responsibility.* (1) The corporate administrative contracting officer (CACO) and individual administrative contracting officers (ACO) shall jointly decide whether negotiations will be conducted on a coordinated or centralized basis. When they are conducted on a coordinated basis, individual ACOs are responsible for coordinating with the CACO to ensure consistency of cost determinations.

(b) *Procedures.* (1) Require DoD contractors to submit a copy of their final indirect cost rate proposals to the contract auditor.

[56 FR 36437, July 31, 1991, as amended at 60 FR 61599, Nov. 30, 1995]

242.705–2 Auditor determination procedure.

(b) *Procedures.* (2)(ii) The contractor and the auditor shall sign the agreement.

(iv) When agreement cannot be reached with the contractor, the auditor will issue a DCAA Form 1, Notice of Contract Costs Suspended and/or Disapproved, in addition to the advisory report to the administrative contracting officer. The DCAA Form 1 details the items of exception and advises the contractor that requests for reconsideration should be submitted in writing to the administrative contracting officer.

[56 FR 36437, July 31, 1991, as amended at 60 FR 61599, Nov. 30, 1995]

242.705–3 Educational institutions.

(b) *Predetermined final indirect cost rates.* (4)(i) Predetermined indirect cost rate proposals may cover a period of two to four years when the cognizant Contracting Officer determines that the educational institution's cost experience and other pertinent facts available are sufficient to enable the parties to reach an informed judgment on the probable levels of indirect costs and allocation base costs for the applicable future accounting periods. Predetermined rates covering two to four year periods are expected to be the norm in those situations.

(6) Predetermined indirect cost rates may be established to cover up to four years.

[59 FR 53116, Oct. 21, 1994]

242.771 Independent research and development/bid and proposal.

242.771–1 Scope of subpart.

This section implements section 802 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Pub. L. 102–190) and is effective for IR&D/B&P costs incurred by a major contractor during fiscal years of that contractor that begin on or after October 1, 1992.

[57 FR 53601, Nov. 12, 1992]

242.771–2 Policy.

Defense contractors are encouraged to engage in IR&D/B&P activities of potential interest to DoD, including activities cited in 231.205–18(c)(2)(i)(2).

[57 FR 53601, Nov. 12, 1992]

242.771–3 Responsibilities.

(a) The cognizant administrative contracting officer (ACO) or corporate ACO shall—

(1) Determine, with input from the field pricing team, whether IR&D/B&P projects performed by major contractors (see FAR 31.205–18(a)) are of potential interest to DoD.

(2) Notify the contractor promptly of any IR&D/B&P activities which are not of potential interest to DoD.

(b) The Defense Contract Management Command of the Defense Logistics Agency or the Military Department responsible for performing contract administration functions is responsible for—

(1) Implementing the requirements of section 802 of Public Law 102–190 as set forth in 231.205–18(c)(2) and FAR 31.205–18.

(2) Submitting an annual report to the Director of Defense Procurement (OUSD(A&T)) setting forth required statistical information relating to the DoD-wide IR&D/B&P program. The Report Control Symbol is DD–ACQ(A)1139.

(c) The Director, Defense Research and Engineering (OUSD(A&T)DDR&E), is responsible for establishing a regular method for communication—

(1) From DoD to contractors, of timely and comprehensive information regarding planned or expected DoD future needs; and

(2) From contractors to DoD, of brief technical descriptions of contractor IR&D projects.

[57 FR 53601, Nov. 12, 1992, as amended at 60 FR 61599, Nov. 30, 1995]

Subpart 242.8—Disallowance of Costs

242.801 Notice of intent to disallow costs.

(e) A corporate administrative contracting officer need not obtain the approval of the individual administrative contracting officers to disallow items of corporate expense.

242.803 Disallowing costs after incurrence.

(a) *Contracting officer receipt of vouchers.* Contracting officer receipt of vouchers is applicable only for cost-reimbursement contracts with the Canadian Commercial Corporation. See 225.870–5(b) for invoice procedures.

(b) *Auditor receipt of voucher.*

(i) The contract auditor is the authorized representative of the contracting officer for—

(A) Receiving vouchers from contractors;

(B) Approving interim vouchers for provisional payment (this includes approving the fee portion of vouchers in accordance with the contract schedule and administrative contracting officer instructions) and sending them to the disbursing office;

(C) Authorizing direct submission of interim vouchers for provisional payment to the disbursing office for contractors with approved billing systems;

(D) Reviewing completion/final vouchers and sending them to the administrative contracting officer; and

(E) Issuing DCAA Forms 1, Notice of Contract Costs Suspended and/or Disapproved, to deduct costs where allowability is questionable.

(ii) The administrative contracting officer—

(A) Approves all completion/final vouchers and sends them to the disbursing officer; and

(B) May issue or direct the issuance of DCAA Form 1 on any cost when

there is reason to believe it should be suspended or disallowed.

[61 FR 25409, May 21, 1996, as amended at 61 FR 25409, May 21, 1996; 61 FR 50454, Sept. 26, 1996]

Subpart 242.11—Production Surveillance and Reporting

242.1104 Surveillance requirements.

(a)(i) As a minimum, contracts will receive pre-delivery telephonic surveillance.

(ii) Contracts in the following categories will receive pre-delivery on-site production surveillance:

(A) Contracts assigned criticality designator A (see FAR 42.1105).

(B) Contracts specifically identified for special surveillance by the contracting officer.

(C) Any contract where telephonic surveillance reveals actual or anticipated delinquency unless the contract administration office, in coordination with the contracting officer, decides that on-site surveillance is not warranted.

[60 FR 29500, June 5, 1995]

242.1105 Assignment of criticality designator.

(1) Contracting officers shall—

(i) Assign criticality designator A to items with a priority 01, 02, 03, or 06 (if emergency supply of clothing) under DoD Directive 4410.6, Uniform Materiel Movement and Issue Priority System; and

(ii) Ordinarily assign criticality designator C to unilateral purchase orders.

(2) Only the contracting officer shall change the assigned designator.

242.1106 Reporting requirements.

(a) See also—

(i) DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs; and

(ii) For cost/schedule control system requirements on major systems acquisitions, 234.005–70.

(b)(i) Within 4 working days after receipt of the contractor's report, the contract administration office (CAO) shall provide the report and any required comments to the contracting officer and, unless otherwise specified in the contract, the inventory control manager.

(ii) If the contractor's report indicates that the contract is on schedule and the CAO agrees, the CAO does not need to add further comments. In all other cases, the CAO shall add comments and recommend a course of action.

(c)(i) CAOs may report using—

(A) DD Form 375–2, Delay in Delivery (Flash Notice);

(B) DD Form 375, Production Progress Report;

(C) MILSCAP Revised Delivery Forecast (RDF) system; or

(D) Message, letters, or facsimile.

(ii) The contracting office shall acknowledge receipt of the CAO report.

[56 FR 36437, July 31, 1991, as amended at 61 FR 50455, Sept. 26, 1996]

242.1107 Contract clause.

(b) When using the clause at FAR 52.242–2, include the following instructions in the contract schedule—

(i) Frequency and timing of reporting (normally 5 working days after each reporting period);

(ii) Contract line items, exhibits, or exhibit line items requiring reports;

(iii) Offices (with addressees/codes) where reports should be sent (always include the contracting office and contract administration office); and

(iv) The following requirements for report content—

(A) The problem, actual or potential, and its cause;

(B) Items and quantities affected;

(C) When the delinquency started or will start;

(D) Actions taken to overcome the delinquency;

(E) Estimated recovery date; and/or

(F) Proposed schedule revision.

242.1107–70 Solicitation provision and contract clause.

(a) Use the clause at 252.242–7005, Cost/Schedule Status Report, in solicitations and contracts for other than major systems that require cost/schedule status reporting (i.e., the Contract Data Requirements List includes DI–MGMT–81467).

(b) Use the provision at 252.242–7006, Cost/Schedule Status Report Plans, in solicitations for other than major systems that require cost/schedule status reporting.

[62 FR 9991, Mar. 5, 1997; 62 FR 11953, Mar. 13, 1997; 62 FR 49305, Sept. 19, 1997]

Subpart 242.12—Novation and Change-of-Name Agreements

242.1202 Responsibility for executing agreements.

The contracting officer responsible for processing and executing novation and change-of-name agreements shall ensure agreements are executed promptly.

[60 FR 1749, Jan. 5, 1995]

242.1203 Processing agreements.

(b)(1) For contracts awarded by the Military Departments, provide notices to the following addressees instead of individual contracting or contract administration offices—

Army	HQ, U.S. Army Material Command, ATTN: AMCCC-P, 5001 Eisenhower Avenue, Alexandria, VA 22333–0001.
Navy	Office of the Assistant Secretary of the Navy (RDA) Procurement Policy, Washington, DC 20350–1000.
Air Force ...	HQ, Air Force Materiel Command, Attn: AFMC/PKM, 4375 Chidlaw Road, suite 6, Wright Patterson AFB, OH 45443-5006.
National Aeronautics and Space Administration.	National Aeronautics and Space Administration, Assistant Administrator for Procurement, ATTN: HP, Washington, DC 20546.

(2)(A) Lists for notices of a successor in interest should include the information at FAR 42.1204(c)(2).

(B) Lists for notices of a name change should include the information at FAR 42.1205(a)(3).

(C) On notices sent to the addressees in paragraph (b)(1) of this section, include a consolidated list for all subordinate contracting offices of the addressee.

(d)(i) Before making any substantial alterations or additions to the novation agreement format at FAR 42.1204(e), coordinate with those addressees in paragraph (b)(1) of this section that have contracts with the contractor. Resolve any objections before executing the agreement.

(ii) If the National Aeronautics and Space Administration (NASA) wants a separate agreement with the contractor, continue to process the agreement only for DoD.

(e) Also, make distribution to—

(i) The addressees in paragraph (b)(1) of this section—two copies; and

(ii) The appropriate Military Traffic Management Command (MTMC) area command for agreements affecting contracts and basic agreements for storage and related services for personal property of military and civilian personnel—two copies—

Commander	Commander.
Eastern Area	Western Area.
Military Traffic Management Command.	Military Traffic Management Command.
ATTN: MTE–LO	Oakland Army Base.
Bayonne, NJ 07002	ATTN: MTW–LO, Oakland, CA 94626.

(f)(4) Additional distribution instructions—

(A) Send two copies to the address in paragraph (b)(1) of this section. The list of contracts may be confined to those issued by that department.

(B) Do not send copies to NASA or the MTMC commands in paragraph (e)(ii). They will issue their own modifications.

[56 FR 36437, July 31, 1991, as amended at 59 FR 27674, May 27, 1994]

242.1204 Agreement to recognize a successor in interest (novation agreement).

(e) When a novation agreement is required and the transferee intends to incur restructuring costs as defined at 213.205–70, the cognizant contracting officer shall include the following provision as paragraph (b)(7) of the novation agreement instead of the paragraph (b)(7) provided in the sample format at FAR 42.1204(e):

''(7)(i) Except as set forth in subparagraph (7)(ii) below, the Transferor and the Transferee agree that the Government is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the transfer or this Agreement, other than those that the Government in the absence of this transfer or Agreement would

have been obligated to pay or reimburse under the terms of the contracts.

(ii) The Government recognizes that restructuring by the Transferee incidental to the acquisition/merger may be in the best interests of the Government. Restructuring costs that are allowable under Part 31 of the Federal Acquisition Regulation (FAR) or Part 231 of the Defense Federal Acquisition Regulation Supplement (DFARS) may be reimbursed under flexibily-priced novated contracts, provided the Transferee demonstrates that the restructuring will reduce overall costs to the Department of Defense (DoD) (and to the National Aeronautics and Space Administration (NASA), where there is a mix of DoD and NASA contracts), and the requirements included in DFARS 231.205–70 are met. Restructuring costs shall not be allowed on novated contracts unless there is an audit of the restructuring proposal; a determination by the contracting officer of overall reduced costs to DoD/NASA; and an Advance Agreement setting forth a cumulative cost ceiling for restructuring projects and the period to which such costs shall be assigned.''

[60 FR 1749, Jan. 5, 1995, as amended at 61 FR 16882, Apr. 18, 1996]

Subpart 242.14—Traffic and Transportation Management

242.1401 General.

(b)(12) Chapter 39 of the Defense Traffic Management Regulation (DTMR) (AR 55–355, NAVSUPINST 4600.70, AFM 75–2, MCO P4600 14A, DLAR 4500.3) contains methods for tracing and expediting shipments.

242.1402 Volume movements within the continental United States.

(a)(2) In reporting planned and actual volume movements—

(A) The contracting officer—

(*1*) Provides production schedules and planned destinations to the servicing transportation office as soon as the information is available to permit the transportation office to determine if volume movements will occur. If a volume movement appears likely, the transportation office reports a planned volume movement under chapters 12 and 13 of the DTMR.

(*2*) Sends a copy of the volume movement report to the contract administration office.

(B) The contract administration office submits a volume movement report when—

(*1*) Significant changes are made to the movement requirements; or

(*2*) The contracting office did not submit a report.

(C) Include the destination country, foreign forwarder, and, if known, port of embarkation on volume movement reports for foreign military sale shipments.

242.1403 Shipping documents covering f.o.b. origin shipments.

(a)(i) Procedures for the contractor to obtain Government bills of lading are in the clause at 252.242–7003, Application for U.S. Government Shipping Documentation/Instructions.

(ii) The term commercial bills of lading includes the use of any commercial form or procedure. Appendix J of the DTMR lists carriers and carrier associations that provide transportation within the continental United States under commercial forms and procedures.

242.1404 Shipments by parcel post or other classes of mail.

242.1404–1 Parcel post eligible shipments.

(b)(1) See DoD 4525.8–M, DoD Official Mail Manual.

[56 FR 67220, Dec. 30, 1991]

242.1404–2 Contract clauses.

When using FAR 52.213–1, Fast Payment Procedures, do not use FAR clauses 52.242–10, F.o.b. Origin—Government Bills of Lading or Prepaid Postage, or 52.242–11, F.o.b. Origin—Government Bills of Lading or Indicia Mail.

242.1404–2–70 Additional clause.

Use the clause at 252.242–7003, Application for U.S. Government Shipping Documentation/Instructions, when using the clause at FAR 52.242–10, F.o.b. Origin—Government Bills of Lading or Prepaid Postage, or FAR 52.242–11, F.o.b. Origin—Government Bills of Lading or Indicia Mail.

[62 FR 34127, June 24, 1997]

242.1405 Discrepancies incident to shipment of supplies.

(a) See also chapter 41 of the Defense Traffic Management Regulation (DTMR) for discrepancy procedures.

242.1470 Demurrage and detention charges.

(a) Procedures for payment or collection of demurrage or detention charges are contained in chapter 38 of the DTMR.

(b) Carrier demurrage rules usually allow for a ''free time'' for loading or unloading cars or for any other purpose, and impose charges for cars held beyond this period. If a contractor detains railroad cars beyond the ''free time,'' the contractor has to pay the carrier's published tariff charges for demurrage.

(c) Detention results when a shipper or consignee holds motor carrier equipment beyond a reasonable period for loading, unloading, forwarding directions, or any other reason. Detention rules and charges are not uniform; they are published in individual carrier or agency tenders.

Subpart 242.15—Contractor Performance Information

242.1503 Procedures.

Evaluations should consider any notifications submitted under paragraph (g) of the clause at 252.219–7003, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts).

[61 FR 18688, Apr. 29, 1996]

Subpart 242.70 [Reserved]

Subpart 242.71—Voluntary Refunds

242.7100 General.

(a) A voluntary refund is a payment or credit (adjustment under one or more contracts or subcontracts) to the Government from a contractor or subcontractor which is not required by any contractual or other legal obligation.

(b) A voluntary refund may be solicited (requested by the Government) or unsolicited.

(1) Generally, request voluntary refunds only after determining that no contractual remedy is readily available to recover the amount sought.

(2) Acceptance of unsolicited refunds does not prejudice remedies otherwise available to the Government.

(c) Before soliciting a voluntary refund or accepting an unsolicited one, the contracting officer should have legal counsel review the contract and related data to—

(1) Confirm that there are no readily available contractual remedies; and

(2) Advise whether the proposed action would jeopardize or impair the Government's rights.

242.7101 Solicited refunds.

(a) Request voluntary refunds only when—

(1) The contracting officer concludes that the contractor overcharged under a contract, or inadequately compensated the Government for the use of Government-owned property, or inadequately compensated the Government in the disposition of contractor inventory; and

(2) Retention of the amount in question by the contractor or subcontractor would be contrary to good conscience and equity.

(b) Do not solicit voluntary refunds without approval of the head of the contracting activity, or as provided in department/agency regulations.

(c) Voluntary refunds may be requested during or after contract performance.

242.7102 Disposition of voluntary refunds.

A contract modification, rather than a check, is the preferred means of effecting a solicited or unsolicited refund transacted before final payment.

(a) For modifications, adjust the price for the refund and credit the refund to the applicable appropriation cited in the contract.

(b) For checks—

(1) Advise the contractor to—

(i) Make the check payable to the agency which awarded the contract;

(ii) Forward the check to the contracting officer or when the contract is assigned to another office for administration, to that office; and

(iii) Include a letter with the check—

(A) Identifying it as a voluntary refund;

(B) Giving the contract number involved; and

(C) Where possible, giving the appropriation and account number to be credited.

(2) Forward the check to the office responsible for control of funds.

Subpart 242.72—Contractor Material Management and Accounting System

242.7200 Scope of subpart.

This subpart provides policies, procedures, and standards for use in the evaluation of a contractor's material management and accounting system (MMAS).

242.7201 Definitions.

Material management and accounting system and *valid time-phased requirements* are defined in the clause at 252.242–7004, Material Management and Accounting System.

242.7202 Policy.

DoD policy is for all contractors to have an MMAS that—

(a) Reasonably forecasts material requirements;

(b) Ensures the costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements;

(c) Maintains a consistent, equitable, and unbiased logic for costing of material transactions; and

(d) Conforms to the standards at 252.242–7004(f) when the contractor has cost-reimbursement or fixed-price contracts exceeding the simplified acquisition threshold, with progress or other contract financing provisions, except when all of the contracts and subcontracts are awarded under the set-aside or Section 8(a) procedures of FAR part 19.

[56 FR 36437, July 31, 1991, as amended at 57 FR 42632, Sept. 15, 1992; 61 FR 50455, Sept. 26, 1996]

242.7203 MMAS disclosure, demonstration, and maintenance requirements.

(a) A large business contractor is subject to MMAS disclosure, demonstration, and maintenance if in its preceding fiscal year the contractor received DoD prime contracts or subcontracts (including modifications) totaling—

(1) $70 million or more; or

(2) $30 million or more (but less than $70 million), and the contracting officer determines it to be in the best interests of the Government (e.g., contractor disclosure, demonstration, or other activities indicate significant MMAS problems exist).

(b) After the administrative contracting officer determines the contractor's MMAS is adequate (see 242.7204(b)), written disclosure will not be required for the next MMAS review unless the contractor's policies, procedures, or practices have changed in the interim period(s). Similarly, once the contractor demonstrates that its MMAS contains no significant deficiencies, demonstration requirements for subsequent reviews may be satisfied if internal audits are reasonably current and contain sufficient transaction tests to demonstrate MMAS compliance with each standard.

[61 FR 50455, Sept. 26, 1996]

242.7204 Responsibilities.

(a) The contracting officer shall—

(1) Through use of the clause at 252.242–7004, Material Management and Accounting System, apply the disclosure, demonstration, and maintenance requirements to large business contractors meeting the criteria in 242.7203(a);

(2) Consider whether to apply the disclosure, demonstration, and maintenance requirements to other large business contractors under 242.7203(a)(2) after concurrence from, or at the request of, the administrative contracting officer; and

(3) Not apply the disclosure, demonstration, and maintenance requirements to small businesses, educational institutions, or nonprofit organizations.

(b) For contractors subject to the disclosure, demonstration, and maintenance requirements, the administrative contracting officer (ACO) determines the adequacy of the contractor's MMAS and pursues correction of deficiencies.

(c) The contract auditor shall—

(1) Assist the ACO in evaluating the contractor's MMAS;

(2) Assess the significance of contractor deficiencies and provide the ACO an estimate of the resulting adverse material impact to the Government; and

(3) Assist the ACO in evaluating the contractor's correction of deficiencies.

[56 FR 36437, July 31, 1991, as amended at 61 FR 50455, Sept. 26, 1996]

242.7205 Review procedures.

(a) *System Evaluation.* Cognizant contract administration and audit activities shall jointly establish and manage programs for evaluating the MMAS systems of contractors subject to disclosure, demonstration, and maintenance requirements and annually establish a schedule of contractors to be reviewed. They shall—

(1) Conduct reviews as a team effort.

(i) The administrative contracting officer—

(A) Appoints a team leader; and

(B) Ensures that the team includes appropriate functional specialists (i.e., industrial specialists, engineer, property administrator, auditor, etc.).

(ii) The team leader—

(A) Advises the ACO and contractor of findings during the review and at the exit conference.

(B) Makes every effort to resolve differences regarding questions of fact during the review.

(2) Tailor reviews to take full advantage of the day-to-day work done by both organizations.

(3) Prepare a review report.

(4) Conduct a review every 3 years. The ACO, with advice from the auditor, may lengthen or shorten the 3 year period based on a risk assessment of the contractor's past experience and current vulnerability.

(b) *Disposition of evaluation team findings.* The team leader shall document the evaluation team findings and recommendations in a report to the ACO. If there are significant MMAS deficiencies, the report must provide an estimate of the adverse impact on the Government resulting from those deficiencies.

(1) *Initial notification to the contractor.* The ACO shall immediately provide a copy of the report to the contractor upon receipt from the team leader.

(i) The ACO shall notify the contractor in a timely manner if there are no deficiencies.

(ii) If there are deficiencies, the ACO shall request the contractor to provide a written response within 30 days from the date of initial notification.

(iii) If the contractor agrees with the report, the contractor has 60 days to correct any identified deficiencies or submit a corrective action plan showing milestones and actions to eliminate the deficiencies.

(iv) If the contractor disagrees, request rationale in the written response.

(2) *Evaluation of the contractor's response.* The administrative contracting officer, in consultation with the auditor, evaluates the contractor's response and determines whether—

(i) The MMAS contains deficiencies which need correction;

(ii) The deficiencies are significant enough to result in the reduction or suspension of progress payments or of payments under public vouchers; and

(iii) Proposed corrective actions (if the contractor submitted them) are adequate to correct the deficiencies.

(3) *Reduction or Suspension of payments.* (i) When the administrative contracting officer (ACO) determines that there is a significant MMAS deficiency, the ACO shall reduce progress payment claims by an appropriate percentage based on affected costs (in accordance with FAR 32.503–6) and/or suspend questionable costs on public vouchers in accordance with FAR 42.803). The reductions or suspensions shall remain in effect until the ACO determines that—

(A) The deficiencies are corrected; or

(B) The amount of the impact is immaterial.

(ii) The maximum payment adjustment is the adverse material impact to the Government as specified in the team's report. The ACO should use the maximum adjustment when the contractor did not submit a corrective action plan with its response, or the plan

is unacceptable. In other cases, the ACO should consider the quality of the contractor's self-assessment, demonstration, and corrective action plan in determining the appropriate percentage.

(iii) As the contractor implements its accepted corrective action plan, the ACO should reinstate a portion of withheld amounts commensurate with the contractor's progress in making corrections. However, the ACO shall not fully reinstate withheld amounts until the contractor corrects the deficiency, or until the impact of the deficiency becomes immaterial.

(4) *Notification of administrative contracting officer determination.* (i) The administrative contracting officer (ACO) shall notify the contractor in writing (copy to auditor and functional specialists) of—

(A) Deficiencies needing correction;

(B) Acceptability of the contractor's corrective action plan (if one was submitted) or the need for a corrective action plan; and

(C) Any decision to reduce or suspend progress payments or public vouchers because of significant deficiencies.

(ii) The Government does not approve or disapprove the contractor's MMAS system. ACO notifications should avoid any such implications.

(iii) From the time the ACO determines that there is a significant material management and accounting system deficiency until the time the deficiency is corrected, all field pricing reports for that contractor shall contain a recommendation relating to proposed cost or pricing data adjustments necessary to protect the Government's interests.

(iv) The ACO should consider the effect of significant MMAS deficiencies in reviews of the contractor's estimating system (215.811).

(5) *Monitoring contractor's corrective action.* The administrative contracting officer (ACO) and auditor shall monitor the contractor's progress in correcting deficiencies. If the contractor fails to make adequate progress, the ACO shall take further action. Actions for consideration may include—

(i) Elevate the issue to higher level management;

(ii) Further reduce or suspend progress payments;

(iii) Notify the contractor of the inadequacy of the contractor's cost estimating system and/or cost accounting system.

(iv) Take appropriate contractual action, i.e., disallow charges as unreasonable; and

(v) Issue cautions to contracting activities regarding the award of future contracts.

242.7206 Contract clause.

Use the clause at 252.242–7004, Material Management and Accounting System, in all solicitations and contracts exceeding the simplified acquisition threshold that are not for the acquisition of commercial items and—

(a) Are not awarded under the set-aside or section 8(a) procedures of FAR part 19; and

(b) Are either—

(1) Cost-reimbursement contracts; or

(2) Fixed-price contracts with progress payments or other Government financing.

[56 FR 36437, July 31, 1991, as amended at 60 FR 61599, Nov. 30, 1995; 61 FR 50455, Sept. 26, 1996]

Subpart 242.73—Contractor Insurance/Pension Review

242.7300 Scope of subpart.

This subpart provides the requirements for conducting a Contractor Insurance/Pension Review (CIPR).

242.7301 General.

(a) The administrative contracting officer (ACO) is responsible for determining the reasonableness of insurance/pension costs in Government contracts. Insurance/pension specialists assist ACOs in making these determinations by conducting CIPRs. A CIPR is an in-depth evaluation of a contractor's—

(1) Insurance program;

(2) Pension plan;

(3) Other deferred compensation plans; and

(4) Related policies, procedures, practices, and costs.

(b) As the DoD Executive Agency, the Defense Logistics Agency performs

CIPRs at all contractor locations meeting criteria in 242.7302.

(c) Insurance/pension specialists are located at the Defense Contract Management Districts in Los Angeles and Chicago and at the Defense Contract Management Area Operations in New York.

(d) The CIPR should be the only formal review of a contractor's insurance/pension program except for periodic tests of the system performed by contract administration and DCAA, or any special reviews initiated by the administrative contracting officer. If any organization believes that additional reviews of the contractor's insurance/pension program should be performed, that request should be conveyed to the ACO. The ACO should perform the review as part of an ACO-initiated special review, of if possible, as part of the CIPR if one is scheduled to be conducted in the near future.

242.7302 Requirements.

(a) A CIPR shall be conducted for each contractor whose qualifying sales to the Government exceeded $40 million during the contractor's preceding fiscal year. Qualifying sales are sales for which certified cost or pricing data were required under 10 U.S.C. 2306, as implemented in FAR 15.804 (unless exempt in accordance with FAR 15.804–3), or which are cost-reimbursement type contracts. Sales include prime contracts, subcontracts, and modifications to such contracts and subcontracts.

(b) A CIPR shall be conducted at least every two years for contractors who continue to meet the requirements. A more or less frequent cycle may be appropriate under certain circumstances, e.g., prior to a major contract award, in conjunction with in-depth overhead review, or subsequent to mergers or divestitures.

(c) Special reviews may be performed in the intervening period—

(1) To follow-up contractor implementation of recommendations and verify Government recovery of credits; or

(2) When information reveals a deficiency or major change in the contractor's insurance/pension program.

(d) Reviews of selected insurance and pension elements may be conducted for contractors not meeting the criteria in paragraph (a) of this section if significant problems have been identified.

[56 FR 36437, July 31, 1991, as amended at 60 FR 29500, June 5, 1995]

242.7303 Responsibilities.

(a) The administrative contracting officer is responsible for—

(1) Determining the need for a CIPR or special review under 242.7302;

(2) Requesting and scheduling the reviews with the appropriate Defense Logistics Agency activity;

(3) Notifying the contractor of the proposed date and purpose of the review, and obtaining any preliminary data needed by the insurance/pension specialist;

(4) Reviewing the CIPR report, advising the contractor of the results, and telling the contractor to submit any significant changes in insurance/pension plans for review and acceptance prior to making the change;

(5) Providing other interested contracting officers copies of documents related to the CIPR; and

(6) Ensuring adequate follow-up on all CIPR recommendations.

(b) The insurance/pension specialist is responsible for—

(1) Preparing and maintaining the schedule of CIPRs to be performed during the next 12 months and providing the Military Departments and Defense Contract Audit Agency a copy of the schedule;

(2) Heading the team that conducts the review;

(3) Maintaining complete documentation for CIPR reports;

(4) To the extent possible, resolving discrepancies between audit reports and CIPR draft reports prior to releasing the final CIPR report;

(5) Preparing and distributing the final CIPR report;

(6) Providing the final audit report as an attachment to the CIPR report;

(7) Preparing a draft letter for the administrative contracting officer's use in notifying the contractor of CIPR results; and

(8) When requested, advising administrative contracting officers and other Government representatives concerning contractor insurance/pension matters.

(c) The Defense Contract Audit Agency auditor is responsible for—

(1) Participating as a member of the CIPR team;

(2) Submitting information and advice to the team based on analysis of the contractor's books, accounting records, and other related data; and

(3) Issuing an audit report to the insurance/pension specialist for incorporation into the final CIPR report.

Subpart 242.74—Technical Representation at Contractor Facilities

242.7400 General.

(a) Contract administration offices (CAOs) are the designated representatives of DoD for the administration of contracts (see FAR 42.202 and 42.302). DoD activities shall use CAOs to perform contract administration service functions at or near contractor facilities (see 242.203(a) (i) and (v).

(b) Program managers may conclude that they need technical representation in contractor facilities to perform non-contract administration service (CAS) technical duties and to provide liaison, guidance, and assistance on systems and programs. In these cases, the program manager may assign technical representatives under the procedures in 242.7401.

(c) Program managers should carefully assess the number of technical representatives required to perform the non-CAS technical functions so as to keep the total assigned in-plant to the minimum necessary.

(d) A technical representative is a representative of a DoD program, project, or system office performing non-CAS technical duties at or near a contractor facility. A technical representative is not—

(1) A representative of a contract administration or contract audit component; or

(2) A contracting officer's representative (COR) (see 201.602).

242.7401 Procedures.

(a) When the program, project, or system manager determines that a technical representative is required, the manager shall issue a letter of intent to the contract administration office commander listing the assignment location, starting and ending assignment dates, technical duties assigned, delegated authority, and support required from the contract administration office. Any issues regarding the assignment of a technical representative should be resolved promptly. However, final decision on the assignment remains with the program manager. Issues regarding the assignment of technical duties which cannot be resolved between the program office and the defense plant representative office will be escalated.

(b) The program, project, or system manager shall furnish the designated technical representative a letter of assignment of delegated technical duties, with copies to the contract administration office, the contracting officer, and contractor, at least 30 days before the assignment date (or termination date). Any changes to the requirements of the assignment letter will be made by a new letter of intent and processed in accordance with paragraph (a) of this section.

(c) The contract administration office normally provides the technical representative with office space, equipment, supplies, and part-time clerical support. The program, project, or system manager provides supervision, technical direction, administrative services (e.g., pay, travel, maintenance of personnel records), and, when required, full-time clerical support.

(d) The program manager or designee and the contract administration office, at the local level, shall negotiate a memorandum of agreement (MOA) delineating their functional administrative interrelationships, with annual updates as necessary. The agreements may be included in an existing MOA, if one exists, or as a separate MOA.

(e) The technical representative shall keep the contract administration office commander fully informed of matters discussed with the contractor. The contract administration office shall also keep the technical representative fully informed of contractor discussions which relate to technical matters within the purview of the technical representative's assigned duties.

Subpart 242.75—Contractor Accounting Systems and Related Controls

SOURCE: 60 FR 29500, June 5, 1995, unless otherwise noted.

242.7500 Scope of subpart.

This subpart provides policies and procedures applicable to contractor accounting systems and related internal controls.

242.7501 Definition.

Internal controls means those policies and procedures established by contractor management to provide reasonable assurance that applicable laws and regulations are complied with and that actual and estimated costs are equitably allocated within the accounting system.

242.7502 Policy.

Contractors receiving cost-reimbursement or incentive type contracts, or contracts which provide for progress payments based on costs or on a percentage or stage of completion, shall maintain an accounting system and related internal controls throughout contract performance which provide reasonable assurance that—

(a) Applicable laws and regulations are complied with;

(b) The accounting system and cost data are reliable;

(c) Risk of misallocations and mischarges are minimized; and

(d) Contract allocations and charges are consistent with invoice procedures.

242.7503 Procedures.

(a) Upon receipt of an audit report identifying significant accounting system or related internal control deficiencies, the ACO will—

(1) Provide a copy of the report to the contractor and allow 30 days, or a reasonable extension, for the contractor to respond;

(2) If the contractor agrees with the report, the contractor has 60 days from the date of initial notification to correct any identified deficiencies or submit a corrective action plan showing milestones and actions to eliminate the deficiencies.

(3) If the contractor disagrees, the contractor should provide rationale in its written response.

(4) The ACO will consider whether it is appropriate to suspend a percentage of progress payments or reimbursement of costs proportionate to the estimated cost risk to the Government, considering audit reports or other relevant input, until the contractor submits a corrective action plan acceptable to the ACO and corrects the deficiencies. (See FAR 32.503–6 (a) and (b) and FAR 42.302(a)(7)).

PART 243—CONTRACT MODIFICATIONS

Sec.

Subpart 243.1—General

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243.107 Contract clause.
243.107–70 Notification of substantial impact on employment.
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243.171 Obligation or deobligation of funds.

Subpart 243.2—Change Orders

243.204 Administration.
243.204–70 Certification of requests for equitable adjustment.
243.205 Contract clauses.
243.205–70 Engineering change proposals.
243.205–71 Pricing of contract modifications.
243.205–72 Certification of requests for equitable adjustment.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36446, July 31, 1991, unless otherwise noted.

Subpart 243.1—General

243.102 Policy.

(b)(i) See subpart 217.74 for limitations on issuing undefinitized contract actions.

(ii) Modifications of letter contracts are subject to the same policies and procedures as modifications of definitive contracts.

243.105 Availability of funds.

(a)(i) 10 U.S.C. 2405 prohibits adjustments in price under a shipbuilding contract entered into after December 7,

1983, for a claim, request for equitable adjustment, or demand for payment under the contract, arising out of events occurring more than 18 months before submission of the claim, request, or demand.

(ii) Section 558 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337) provides that no funds available to DoD may be provided by contract or contract modification, nor may contract payments be made, to an institution of higher education that has a policy of denying or that effectively prevents the Secretary of Defense from obtaining for military recruiting purposes—

(A) Entry to campuses or access to students on campuses; or

(B) Access to directory information pertaining to students. (See 209.470.)

(iii) Pursuant to 10 U.S.C. 983, no funds may be obligated by contract or contract modification to an institution of higher education that has an anti-ROTC policy. (See 209.470.)

[61 FR 25408, May 21, 1996]

243.107 Contract clause.

For DoD, the *specifically authorized representative* (SAR) referred to in the clause at FAR 52.243–7, Notification of Changes, is a *contracting officer's representative* as defined in 202.101 and as discussed in subpart 201.6.

243.107–70 Notification of substantial impact on employment.

The Secretary of Defense is required to notify the Secretary of Labor if a modification of a major defense contract or subcontract will have a substantial impact on employment. The clause prescribed at 249.7002(c) requires that the contractor notify the contracting officer when a contract modification will have a substantial impact on employment.

[56 FR 67220, Dec. 30, 1991]

243.170 Identification of foreign military sale (FMS) requirements.

Identify contract modifications that add FMS requirements by clearly marking ''FMS Requirement'' on the front. Within the modification, cite each FMS case identifier code by line/subline item number, e.g., FMS Case Identifier GY–D–DCA.

[56 FR 36446, July 31, 1991. Redesignated at 56 FR 67220, Dec. 30, 1991]

243.171 Obligation or deobligation of funds.

For each contract modification, the contracting officer shall identify, in Section G, Contract Administration Data (Uniform Contract Format), or the contract schedule (Simplified Contract Format), under the heading ''Summary for the Payment Office,'' information sufficient to permit the paying office to readily identify the changes for each contract line and subline item as follows—

(a) The amount of funds obligated by prior contract actions, to include the total cost and fee if a cost-type contract; the target fee at time of contract award if a cost-plus-incentive-fee contract; the base fee if a cost-plus-award-fee contract; or the target price and target profit if a fixed-price incentive contract;

(b) The amount of funds obligated or deobligated by the instant modification, categorized by the types of contracts specified in paragraph (a) of this section; and

(c) The total cumulative amount of obligated or deobligated funds, categorized by the types of contracts specified in paragraph (a) of this section.

[60 FR 34470, July 3, 1995]

Subpart 243.2—Change Orders

243.204 Administration.

(b) *Definitization.* The administrative contracting officer (ACO) must review change orders issued by the contracting officer to ensure compatibility with the status of performance. If the contractor has progressed beyond the effective point specified in the change order, the ACO must determine the earliest practical point at which the change order could be made effective and advise the contracting officer. The contracting officer must issue another change order to correct, revise, or supersede the first change order, then definitize by supplemental agreement citing both change orders.

243.204–70 Certification of requests for equitable adjustment.

(a) A request for equitable adjustment to contract terms that exceeds the simplified acquisition threshold may not be paid unless the contract certifies the request in accordance with the clause at 252.243–7002.

(b) The aggregate amount of both the increased and decreased costs shall be used in determining when the dollar threshold requiring certification is met (see example in FAR 15.804–2(a)(1)(iii)).

[62 FR 37147, July 11, 1997]

243.205 Contract clauses.

243.205–70 Engineering change proposals.

Engineering changes can originate with either the contractor or the Government. In either case, the Government will need detailed information from the contractor for evaluation of the technical, cost, and schedule effects of implementing the change. When the contracting officer wants this information submitted in the format prescribed by MIL–STD–973, use the clause at 252.243–7000, Engineering Change Proposals. Use the clause with its Alternate I, when appropriate, to discourage submission of a large number of small dollar, contractor originated engineering change proposals.

[59 FR 27674, May 27, 1994]

243.205–71 Pricing of contract modifications.

Use the clause at 252.243–7001, Pricing of Contract Modifications, in solicitations and contracts when anticipating and using a fixed price type contract.

243.205–72 Certification of requests for equitable adjustment.

Use the clause at 252.243–7002, Certification of Requests for Equitable Adjustment, in solicitations and contracts estimated to exceed the simplified acquisition threshold.

[62 FR 37147, July 11, 1997]

PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

Sec.

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244.403 Contract clause.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36447, July 31, 1991, unless otherwise noted.

Subpart 244.2—Consent to Subcontracts

244.202 Contracting officer's evaluation.

244.202–2 Considerations.

(a) Where other than lowest price is the basis for subcontractor selection, has the contractor adequately substantiated the selection as offering the greatest value to the Government?

[60 FR 29501, June 5, 1995]

Subpart 244.3—Contractors' Purchasing Systems Reviews

244.301 Objective.

The administrative contracting officer (ACO) is responsible for reviewing the contractor's purchasing systems. Members of other organizations such as audit or program management activities should not conduct separate reviews of a contractor's purchasing system, but may participate in a review

conducted for the ACO. These organizations may, if they suspect a problem, recommend that the ACO initiate a special review.

244.304 Surveillance.

(b) The ACO, or the purchasing system analyst (PSA) with the concurrence of the ACO, may initiate a special review of specific weaknesses in the contractor's purchasing system. The weaknesses, for example—

(i) May arise because of—

(A) Major changes in the contractor's purchasing policies, procedures, or key personnel; or

(B) Changes in plant workload or type of work.

(ii) May be discovered—

(A) During reviews of subcontracts submitted under advance notification and consent (FAR subpart 44.2); or

(B) From information provided by Government personnel.

[56 FR 36447, July 31, 1991, as amended at 61 FR 50455, Sept. 26, 1996]

244.305 Granting, withholding, or withdrawing approval.

244.305–70 Granting, withholding, or withdrawing approval.

Use this subsection instead of FAR 44.305–2(c) and 44.305–3(b).

(a) At the completion of the in-plant portion of the review, the ACO shall hold an exit conference with the contractor. At the conference, the ACO should—

(1) Present the review team's recommendations, signed by the ACO;

(2) Request the contractor submit its plan for correcting deficiencies or making improvements within 15 days; and

(3) Not comment on the pending or planned decision to grant or withhold approval of the contractor's purchasing system.

(b) The PSA should submit the complete report to the ACO, or any department or agency established review board, within ten days after receipt of the contractor's response under paragraph (a)(2) of this subsection.

(c) The ACO should completely review the report and consider the contractor's response before making a decision on granting, withholding, or withdrawing purchasing system approval. The ACO shall notify the contractor of the decision within ten days after receipt of the report with a copy of the decision to the PSA and the contracting office, when requested.

(d) When a contractor advises that it has corrected deficiencies that led the ACO to withhold or withdraw the purchasing system approval, the ACO—

(1) Shall request the PSA to verify that the contractor has—

(i) Corrected the deficiencies; and

(ii) Implemented any other ACO recommendations.

(2) Should ask for a review of purchasing policies and procedures issued since the last review.

Subpart 244.4—Subcontracts for Commercial Items and Commercial Components

244.403 Contract clause.

Use the clause at 252.244–7000, Subcontracts for Commercial Items and Commercial Components (DoD Contracts), in solicitations and contracts for supplies or services other than commercial items, that contain the clause at 252.225–7014, Preference for Domestic Specialty Metals, Alternate I.

[62 FR 5780, Feb. 7, 1997; 62 FR 49305, Sept. 19, 1997]

PART 245—GOVERNMENT PROPERTY

Sec.

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245.7311–4 Other special conditions.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36448, July 31, 1991, unless otherwise noted.

Subpart 245.1—General

245.104 Review and correction of contractor's property control systems.

(a) The property administrator shall perform property administration in accordance with DoD 4161.2–M, Manual for the Performance of Contract Property Administration.

[56 FR 36448, July 31, 1991, as amended at 56 FR 67220, Dec. 30, 1991]

Subpart 245.3—Providing Government Property to Contractors

245.301 Definitions.

Agency-peculiar property, as used in DoD, means military property and includes end items and integral components of military weapons systems, along with the related peculiar support equipment which is not readily available as a commercial item.

Facilities project means a Government project to provide, modernize or replace facilities for use by a contractor in performing a Government contract or subcontract.

Industrial plant equipment (IPE) means plant equipment in Federal stock group 34 with an acquisition cost of $15,000 or more used for cutting, abrading, grinding, shaping, forming, joining, heating, treating, or otherwise altering the physical properties of materials, components or end items entailed in manufacturing, maintenance, supply, processing, assembly, or research and development operations. IPE is further identified in AR 700–43/NAVSUP PUB 5009/AFM 78–9/DLAM 4215.1, Management of Defense-Owned Industrial Plant Equipment.

Mapping, charting, and geodesy (MC&G) property is defined in the clause at 252.245–7000, Government Furnished Mapping, Charting and Geodesy Property.

Other plant equipment (OPE) means plant equipment regardless of dollar value, used in or in conjunction with the manufacture of components or end items relative to maintenance, supply, processing, assembly or research and development operations. OPE excludes equipment categorized as IPE.

Provide means either to furnish, as in Government-furnished property, or to acquire, as in contractor-acquired property.

245.302 Providing facilities.

245.302–1 Policy.

(a)(4)(A) Comply with DoD Directive 4275.5, Acquisition and Management of Industrial Resources, in processing a request for facilities. Submit requests for approval of facilities projects—

(*1*) To the Secretaries of the Military Departments and the directors of defense agencies for Government-owned facilities projects if the project—

(*i*) Is a research and development-funded effort not exceeding $3 million per fiscal year; or

(*ii*) Is funded from procurement appropriations, approved on a location basis, and does not exceed $5 million for all property efforts during one fiscal year; or

(*iii*) Is in support of a major system or subsystem (including ammunition-related projects) and the total investment will not exceed $25 million during the projected acquisition or maintenance effort.

(*2*) To the Office of the Deputy Under Secretary of Defense (Industrial Affairs and Installations) for projects exceeding the limitations in paragraph (a)(4)(A)*(1)* of this subsection.

(B) The contracting officer shall coordinate the Determination and Finding with the program or project manager.

(C) Departments and agencies must submit reports of facilities projects to the House and Senate Armed Services Committees—

(*1*) At least 30 days before starting facilities projects involving real property (10 U.S.C. 2662); and

(*2*) In advance of starting construction for a facilities project regardless of cost. Use DD Form 1391, Fiscal Year 19____, Military Construction Project Data, to notify congressional committees of projects which are not included in the annual budget.

(b)(1)(A) *Industrial plant equipment.* Before acquiring industrial plant equipment—

(*1*) Submit a DD Form 1419, DoD Industrial Plant Equipment Requisition, to the Defense Supply Center Richmond (DSCR), Attn: JH, 8000 Jefferson Davis Highway, Richmond, Va 23297–5100, in accordance with AR 700–43/NAVSUP PUB 5009/AFM 78–9/DLAM 4215.1, Management of Defense-Owned Industrial Plant Equipment, to determine whether existing, reallocable Government-owned facilities can be used.

(*2*) Do not acquire any item listed on the DD Form 1419 until a certificate of nonavailability is received from DSCR.

(B) *Automatic data processing equipment.* The administrative contracting officer submits contractor requests to acquire automatic data processing equipment to the Defense Information Systems Agency, Chief Information Officer, Defense Automation Resources Management Program Division, Attn: D03D, 701 South Courthouse Road, Arlington, VA 22204–2199, in accordance with the Defense Automation Resources Management Manual.

[56 FR 36448, July 31, 1991, as amended at 62 FR 34127, June 24, 1997]

245.302–2 Facilities contracts.

Terminate facilities contracts when Government production and research property is no longer required for the performance of Government contracts or subcontracts, unless termination is not in the best interest of the Government. The contractor is not allowed to extend the time for use of property provided under the facilities contract without Government authorization.

245.302–7 Optional property-related clauses for facilities contracts.

Use the clause at 252.225–7030, Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate, as prescribed in 225.7017–4.

[57 FR 14995, Apr. 23, 1992]

245.303 Providing material.

245.303–2 Procedures.

When a contractor will be responsible for preparing requisitioning documentation, include in the contract the requirement to prepare the documentation in accordance with DoD 4000.25–1–M, Military Standard Requisitioning and Issue Procedures (MILSTRIP). Copies are available from the address cited at 251.102(e)2.b(2).

245.307 Providing special test equipment.

245.307–2 Acquiring special test equipment.

(b) *Notice and approval.* (1) The review requires a written evaluation from the appropriate technical specialist.

245.310 Providing agency-peculiar property.

(c) All Government-furnished mapping, charting and geodesy (MC&G) property is under the control of the Director, Defense Mapping Agency (DMA). (See DoDD 5105.40, Defense Mapping Agency (DMA)).

(i) MC&G property shall not be duplicated, copied, or otherwise reproduced for purposes other than those necessary for contract performance.

(ii) Upon completion of contract performance, the contracting officer shall—

(A) Contact the Director, DMA(PP), 8613 Lee Highway, Fairfax, VA 22031–2137 for disposition instructions;

(B) Direct the contractor to destroy or return all Government-furnished MC&G property not consumed during contract performance; and

(C) Specify the destination and means of shipment for material to be returned to the Government.

[56 FR 36448, July 31, 1991, as amended at 59 FR 27674, May 27, 1994]

245.310–70 Contract clause.

Use the clause at 252.245–7000, Government-Furnished Mapping, Charting, and Geodesy Property, in solicitations and contracts when mapping, charting, and geodesy property is to be furnished.

[57 FR 42632, Sept. 15, 1992]

Subpart 245.4—Use and Rental of Government Property

245.401 Policy.

Government use includes use on contracts for foreign military sales. Use on contracts for foreign military sales shall be on a rent-free basis.

245.403 Rental—Use and charges clause.

(1) The DoD normally recovers a fair share of nonrecurring costs of special tooling and special test equipment by including these costs in its calculation of the nonrecurring cost recoupment charge when major defense equipment is sold by foreign military sales or direct commercial sales to foreign governments or international organizations. Major defense equipment is defined in DODD 2140.2, Recoupment of Nonrecurring Costs on Sales of U.S. Products and Technology, as any item of significant combat equipment on the United States Munitions List having a nonrecurring RDT&E cost of more than $50 million or a total production cost of more than $200 million.

(2) When these cost thresholds are not met, the contracting officer shall assess rental charges for use of special tooling and special test equipment pursuant to the Use and Charges clause when administratively practicable.

245.405 Contracts with foreign governments or international organizations.

(1) *Approval.* A contractor may use Government production and research property on work for foreign governments and international organizations only when approved in writing by the contracting officer having cognizance of the property. The contracting officer shall grant approval only if—

(i) The use will not interfere with foreseeable requirements of the United States;

(ii) The work is undertaken as a DoD foreign military sale; or

(iii) For a direct commercial sale, the foreign country or international organization would be authorized to contract with the department concerned under the Arms Export Control Act.

(2) *Use charges.* (i) The Use and Charges clause is applicable on direct commercial sales to foreign governments or international organizations.

(ii) When a particular foreign government or international organization has funded the acquisition of specific production and research property, do not assess the foreign government or international organization rental charges or nonrecurring recoupments for the use of such property.

(3) *Waivers.* (i) Rental charges for use of U.S. production and research property on commercial sales transactions to the Government of Canada are waived for all commercial contracts. This waiver is based on an understanding wherein the Government of Canada has agreed to waive its rental charges.

(ii) Requests for waivers or reduction of charges for the use of Government facilities on work for foreign governments or international organizations shall be submitted to the contracting officer who shall refer the matter through contracting channels. In response to these requests, approvals may be granted only by the Director, Defense Security Assistance Agency for particular sales which are consistent with paragraph (1)(iii) of this section.

245.407 Non-Government use of plant equipment.

(a)(i) Non-Government use of industrial plant equipment (IPE) exceeding 25 percent requires prior approval of the—

(A) Assistant Secretary of the Army (RD&A);

(B) Assistant Secretary of the Navy (RD&A);

(C) Assistant Secretary of the Air Force (Acquisition); or

(D) Director, Defense Logistics Agency.

(ii) The authority in paragraph (a)(i) of this section may be delegated to the head of a contracting activity. Any redelegation requires the approval of the Office of the Deputy Under Secretary of Defense (Industrial Affairs and Installations).

(iii) To determine percentage—

(A) Compute the percentage of non-Government use on time available for use. Use contractor's normal work schedule as represented by the scheduled production shift hours.

(B) Use a base time period which is neither less than three months nor more than one year.

(C) Use may be averaged at a single plant for all items costing less than $25,000.

(iv) Contractors should submit requests for non-Government use of IPE to the contract administration office at least six weeks before the projected use. The requests shall include:

(A) Total number and acquisition cost of IPE items; and

(B) For each unit of IPE with an acquisition cost of $25,000 or more, an itemized list including nomenclature, plant equipment code, year of manufacture and acquisition cost.

(v) Approving officials shall retain for periodic review, documentation of the circumstances justifying non-Government use of IPE.

[56 FR 36448, July 31, 1991, as amended at 62 FR 34127, June 24, 1997]

Subpart 245.5—Management of Government Property in the Possession of Contractors

245.505 Records and reports of Government property.

245.505–3 Records of material.

If adequate controls are in place to meet the requirements of the clause at 252.242–7004, Material Management and Accounting System, the contractor's material control system may physically commingle inventories that may include materials for which costs are charged or allocated to fixed-price, cost-reimbursement, and commercial contracts. Government-furnished material (GFM) may not be physically commingled with other material, nor may GFM be used on contractor's commercial work.

245.505–5 Records of plant equipment.

(a) The contractor may use DD Form 1342, DoD Property Record, as a source document for setting up prescribed records.

245.505–6 Special reports of plant equipment.

The contractor shall prepare a DD Form 1342 in accordance with instructions contained in AR 700–43/NAVSUP PUB 5009/AFM 78–9/DLAM 4215.1, Management of Defense-Owned Industrial Plant Equipment (IPE)—

(1) Upon receipt and acceptance of each item of IPE including items which, though part of a manufacturing system, would otherwise qualify as IPE;

(2) Whenever major changes occur in the data initially submitted to Defense Supply Center Richmond (DSCR) (as specified by DLAM 4215.1);

(3) When IPE, including general purpose components of special test equipment which otherwise qualify as IPE, is no longer required for the purpose authorized or provided; or

(4) When disposal is completed.

[56 FR 36448, July 31, 1991, as amended at 62 FR 34127, June 24, 1997]

245.505–14 Reports of Government property.

(a) Use the clause at 252.245–7001, Reports of Government Property, in all solicitations and contracts containing one of the following clauses—

(1) FAR Section 52.245–2, Government Property (Fixed-Price Contracts);

(2) FAR Section 52.245–5, Government Property (Cost Reimbursement, Time-and-Material, or Labor-Hour Contracts;

(3) FAR Section 52.245–7, Government Property (Consolidated Facilities);

(4) FAR Section 52.245–10, Government Property (Facilities Acquisition); or

(5) FAR Section 52.245–11, Government Property (Facilities Use).

[59 FR 27674, May 27, 1994]

Subpart 245.6—Reporting, Redistribution, and Disposal of Contractor Inventory

245.601 Definitions.

(1) *Controlled substances* means—

(i) Narcotic, depressant, stimulant, or hallucinogenic drug or substance;

(ii) Any other drug or substance controlled under Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970; or

(iii) A drug or substance required to be controlled by international treaty, convention or protocol.

(2) *Demilitarization* means the act of destroying the offensive or defensive characteristics of equipment or material to prevent its further military or lethal use.

(3) *Production scrap* means material left over from the normal production process that has only remelting or reprocessing value, e.g., textile and metal clippings, borings, and faulty castings and forgings.

(4) *Serviceable or usable property* means property that has a potential for use or sale value ''as is'' or with minor repairs or alterations; only property in Federal Condition Codes A1, A2, A4, A5, B1, B2, B4, B5, F7, or F8.

245.603 Disposal methods.

245.603–70 Contractor performance of plant clearance duties.

(a) *Authorization.* (1) Contract administration offices (CAOs) may, with head of the contracting activity approval and contractor concurrence, authorize selected contractors to perform certain plant clearance functions if the volume of plant clearance warrants performance by the contractor.

(2) The written authorization shall, as a minimum—

(i) Designate the contractor as an ''accredited contractor'';

(ii) Identify the plant clearance actions to be performed;

(iii) State that the Government may cancel part of or all of the authorization to perform plant clearance actions; and

(iv) Provide for plant clearance officer participation when required.

(b) *Government oversight and assistance.* (1) The contract administration office will ensure regular evaluation of the contractor's performance of the plant clearance function and any corrective action required.

(2) The plant clearance officer shall—

(i) Evaluate the adequacy and ensure compliance with contractor procedures;

(ii) Ensure discrepancies are promptly resolved;

(iii) Advise the contractor of screening and inventory schedule requirements;

(iv) Respond to contractor requests to withdraw Government-furnished property from inventory schedules;

(v) Evaluate physical, quantitative, and technical allocability of contractor inventory prior to disposal using Standard Form 1423, Inventory Verification Survey, as a guide;

(vi) Direct contractor to delay disposition of nonallocable inventory pending a contracting officer decision;

(vii) With the contractor's assistance, establish criteria for review and approval of selected contractor disposal decisions;

(viii) Complete first endorsement section of DD Form 1640, Request for Plant Clearance, on referrals from plant clearance officers at prime contract administration offices for the disposal of subcontractor inventory; forward inventory schedules to the contractor for processing; and forward completed case file to the referring activity; and

(ix) Work with the contractor, screeners, and buyers to ensure that the Government receives maximum reutilization and disposal proceeds.

(c) *Accredited contractor plant clearance duties.* The accredited contractor shall—

(1) Ensure inventory schedule acceptability. Use DD Form 1637, Notice of Acceptance of Inventory, if desired;

(2) Suspend disposition of property when assets are determined nonallocable (FAR 45.606–3);

(3) Withdraw property from inventory schedules and notify the affected screening activities. Obtain plant clearance officer approval for withdrawal of Government furnished property from inventory schedules (FAR 45.606–4);

(4) Determine method of disposal under established priorities and document disposal decisions and actions;

(5) Assign the automatic release date and the surplus release date;

(6) Initiate prescribed screening and effect resulting transfers and donations;

(7) Account for disposal of all contractor inventory and application of proceeds and submit to the plant clearance officer a Standard Form 1424, Inventory Disposal Report, or equivalent;

(8) Maintain the donable file and release property to eligible donees (FAR 45.609);

(9) Prepare, approve, sign, and maintain official plant clearance files and required forms (245.7101);

(10) Not conduct noncompetitive sales of surplus contractor inventory; and

(11) Notify the plant clearance officer in advance when bidding on property.

[56 FR 36448, July 31, 1991, as amended at 56 FR 67220, Dec. 30, 1991]

245.603–71 Disposal of contractor inventory for NATO cooperative projects.

(a) North Atlantic Treaty Organization (NATO) cooperative project agreements may include disposal provisions of jointly acquired property without regard to any applicable disposal laws of the United States.

(b) Disposal of such property may include a transfer of the U.S. interest in the property to one of the other governments participating in the agreement, or the sale of the property.

(c) Payment for the transfer or sale of any U.S. interest shall be made in accordance with the terms of the project agreement.

245.604 Restrictions on purchase or retention of contractor inventory.

(1) Contractors authorized to sell inventory may not knowingly sell the inventory to any person or that person's agent, employee, or household member if that person—

(i) Is a civilian employee of the DoD or the U.S. Coast Guard; or

(ii) Is a member of the armed forces of the United States, including the Coast Guard; and

(iii) Has any functional or supervisory responsibilities for or within the Defense Reutilization and Marketing Program, or for the disposal of contractor inventory.

(2)(i) A contractor's authority to approve a subcontractor's sale, purchase, or retention at less than cost, and the subcontractor's authority to sell, purchase, or retain at less than cost if approved by a higher-tier contractor, does not include authority to approve—

(A) A sale by a subcontractor to the next-higher tier contractor or to an affiliate of such contractor or of the subcontractor; or

(B) A sale, purchase, or retention at less than cost, by a subcontractor affiliated with the next higher-tier contractor.

(ii) The written approval of the plant clearance officer is required for each excluded sale, purchase, or retention at less than cost.

(3) *Demilitarization*. The contractor shall demilitarize contractor inventory possessing offensive or defense characteristics, and not required within the DoD, in accordance with Defense Demilitarization Manual, DoD 4160.21–M–1. In unusual cases the plant clearance officer may authorize the purchaser to perform the demilitarization; however, the purchaser shall not be granted such authorization if the inventory is dangerous.

(4) *Classified inventory*. Classified contractor inventory shall be disposed of in accordance with applicable security regulations or as directed by the contracting officer.

(5) *Dangerous inventory*. Contractor inventory dangerous to public health or safety shall not be donated or otherwise disposed of unless rendered innocuous or until adequate safeguards have been provided.

245.606 Inventory schedules.

245.606–3 Acceptance.

(a) If the schedules are acceptable, the plant clearance officer shall, within 15 days, complete and send the contractor a DD Form 1637, Notice of Acceptance of Inventory.

(b) To assist in verifying inventory allocability, the plant clearance officer shall follow the instructions in 245.7201.

245.606–5 Instructions for preparing and submitting schedules of contractor inventory.

(d) *General instructions for completing forms.*

(4) The contractor shall use the following codes together with the disposal codes 1 through 9, X, and S (e.g., A1, F7, SS) to indicate the condition of the property—

A—New, used, repaired, or reconditioned property; serviceable and issuable to all customers without limitations or restrictions; includes material with remaining shelf life of more than six months.

B—New, used, repaired, or reconditioned property; serviceable and issuable or for its intended purpose but restricted from issue to specific units, activities, or geographical areas because of its limited usefulness or short service-life expectancy; includes material and remaining shelf life of three to six months.

F—Economically reparable property which requires repair, overhaul or reconditioning; includes reparable items which are radioactively contaminated.

H—Property which has been determined to be unserviceable and does not meet repair criteria.

S—Property that has no value except for its basic material content.

(e) *Instructions for completing specific forms.*

(4) *Inventory Schedule D (Special Tooling and Special Test Equipment) (SF 1432).*

(ii) *Description.*

For termination inventory included in a settlement proposal, include cost of inventory acquired for performance of the entire contract in column F1 and cost of inventory acquired solely for the terminated portion of the contract in column F2. Cost of inventory acquired for the entire contract must be prorated between the terminated and nonterminated portions.

245.606–70 Instructions for completing DD Form 1342, DoD Property Record.

(a) The contractor shall list excess industrial plant equipment (IPE) on DD Form 1342, DoD Property Record, and submit it to the Government property administrator for review and transmittal to the plant clearance officer. For numerically controlled IPE, the contractor shall prepare and submit DD Form 1342, section VI, (page 2), Numerically Controlled Machine Data.

(b) Upon receipt of the DD Form 1342, the plant clearance officer will—

(1) Designate the 75th day from the date of receipt as the automatic release date (ARD) and the 90th day as the screening completion date (SCD); and

(2) Enter the ARD in Block 24 of the DD Form 1342.

245.607 Scrap.

245.607–1 General.

(a)(i) The contractor may request a pre-inventory scrap determination, made by the plant clearance officer after an on-site survey, if inventory is considered without value except for scrap. If approved, the contractor may make a single descriptive entry on an inventory schedule, generally describing the property and indicating its approximate total cost. The plant clearance officer will establish a plant clearance case and perform limited screening.

(ii) If the contractor has an approved scrap procedure, routine disposal of production scrap and spoilage is authorized, and a plant clearance case is unnecessary. The contractor may similarly dispose of worn, broken, mutilated, or otherwise rejected parts from overhaul and repair contracts with the approval of the plant clearance officer.

(iii) In addition to segregating scrap to maximize proceeds, the contractor may also consolidate sales of Government and contractor scrap if approved by the plant clearance officer. When a consolidated sale is approved, the plant clearance officer shall waive the scrap warranty required at 245.607–70.

(iv) When a contractor's approved scrap procedure does not require physical segregation of Government and contractor scrap, the plant clearance officer shall ensure the proceeds of scrap sale are equitably distributed.

245.607–2 Recovering precious metals.

(b) Precious metals are silver, gold, platinum, palladium, rhodium, iridium, osmium, and ruthenium.

(i) At the beginning of every fiscal year, the Defense Reutilization and Marketing Service (DRMS) will provide each contract administration office with disposition instructions for certain categories of precious metals-bearing property, including scrap and usable items containing recoverable quantities of these metals. The disposition instructions—

(A) Will remain in effect for the entire fiscal year, unless modified by DRMS; and

(B) Will contain a fund citation to be used when disposition requires shipment of precious metals-bearing property for recovery.

(ii) Plant clearance officers shall obtain disposition instructions for precious metals-bearing property not covered by the annual disposition instructions from the Defense Reutilization and Marketing Service, Attn: DRMS–OC, 74 N. Washington Avenue, Battle Creek, MI 49017–3092.

[59 FR 27674, May 27, 1994]

245.607–70 Scrap warranty.

(a) If the contractor sells its inventory as scrap to anyone, including a holding contractor, the contractor shall include in the sales contract a signed copy of DD Form 1639, Scrap Warranty.

(b) The contracting officer may release the contractor from the terms of the scrap warranty in return for consideration paid to the Government. The consideration will represent the difference between—

(1) The sale price of the scrap; and

(2) A fair and reasonable price for the material if it had been sold for purposes other than scrap.

(c) The contractor shall pay the consideration to the Government and the Government may execute the release even though the contract containing the warranty was not made directly with the Government.

(d) If the scrap is resold to a second buyer, the first buyer shall obtain a scrap warranty from the second buyer. Upon receipt of the second buyer's scrap warranty, the Government will release the first buyer from liability under the original warranty.

245.608 Screening of contractor inventory.

245.608–1 General.

(a) The plant clearance officer shall arrange for inspection of property at the contractor's plant if requested by a prospective transferee, in such a manner as to avoid interruption of the contractor's operations.

245.608–2 Standard screening.

(b)(1) For the first 30 days, property screening will be limited to the contracting agency and the requiring agency, when they are not the same. The requiring agency shall have priority for retention of listed items.

245.608–5 Special items screening.

(a) *Special test equipment with standard components.* (1) The contractor shall report any excess special test equipment (STE) using SF 1432, Inventory Schedule D (Special Tooling and Special Test Equipment). The contractor shall list and describe on the inventory schedule all general-purpose components which, if economically severable from the STE, would otherwise be classified as industrial plant equipment (IPE), other plant equipment (OPE), or automatic data processing equipment (ADPE).

(2) The plant clearance officer will perform the initial screening of the composite STE unit.

(A) If the contracting department/agency and the requiring department/agency decline the STE or the standard components or do not approve their transfer to another contract; then,

(B) The plant clearance officer will screen the STE and any severable components with the—

(*1*) General Services Administration—STE unit, less any standard components, and nonreportable standard components;

(*2*) Defense Supply Center Richmond—IPE components;

(*3*) Contractor Inventory Redistribution System—OPE components; and

(*4*) Defense Information Systems Agency, Chief Information Officer, Defense Automation Resources Management Program Division—ADPE components.

[56 FR 36448, July 31, 1991, as amended at 62 FR 34128, June 24, 1997]

245.608–7 Reimbursement of cost for transfer of contractor inventory.

The Defense Logistics Agency will pay for the movement of industrial plant equipment under the direction and control of the Defense Industrial Plant Equipment Center.

245.608–70 Contractor inventory redistribution system (CIRS).

(a) Screen serviceable and usable contractor inventory through CIRS when it—

(1) Is listed on SF 1428, Inventory Schedule B, or SF 1434, Inventory Schedule E; and

(2) Has a national stock number, and line item acquisition value in excess of $50; or

(3) Has a line item acquisition value in excess of $1,000 ($500 for furniture) but no national stock number.

(b) Using Standard Form 120, Report of Excess Personal Property, the plant clearance officer will send two copies of SF 1428 or SF 1434 (or authorized substitutes) to the Defense Reutilization and Marketing Service (DRMS). DRMS will notify the plant clearance officer of items processed, not accepted, or available for local area screening.

(c) Property subject to CIRS processing will be screened within DoD for 30 days. On the 31st day, unless otherwise specified on SF Form 120, appropriate items not requisitioned by DoD will be reported to the General Services Administration (GSA) for standard Federal agency and donation screening. Examples of items which are not reportable to GSA include usable hazardous cleaners and solvents.

(d) For requisitioned items, DRMS will issue shipping instructions to the plant clearance officer. During the first 45 days of the screening period, the plant clearance officer forwards any requisitions received to DRMS. After 45 days, the plant clearance officer forwards the requisition directly to GSA.

(e) The contractor sends one copy of the shipping document to DRMS when shipment has been made.

(f) Unless directed by the contracting officer, motor vehicles excess to Army and Navy contracts shall not be screened through CIRS.

[56 FR 36448, July 31, 1991, as amended at 60 FR 29501, June 5, 1995]

245.608–71 Screening industrial plant equipment.

(a) *Reporting.* Within 15 days of receipt, the plant clearance officer will forward two copies of the DD Form 1342, DoD Property Record, to the Defense Supply Center Richmond (DSCR), ATTN: JH, 8000 Jefferson Davis Highway, Richmond, VA 23297–5100, for all IPE not condition coded ''X'' or ''S.'' Process IPE condition coded ''X'' or ''S'' in accordance with department or agency procedures.

(b) *Screening*—(1) First 30 days. DSCR will—

(i) Screen excess IPE against all DoD requirements with priority given to requirements of the owning department/agency through the 30th day.

(ii) For items selected, issue shipping instructions containing accounting, funding, transportation, routing recommendations, and preservation instructions.

(2) *31st through 75th day*. (i) DSCR will report excess IPE to GSA on 31st day.

(ii) GSA will—

(A) Approve department/agency requests on first come-first served basis;

(B) Approve and forward transfer orders to the contract administration office; and

(C) Forward copies of approved transfer orders to DSCR.

(3) *76th through 90th day*. GSA will—

(i) Provide for screening for donation;

(ii) Receive, approve and forward donation applications to the contract administration office; and

(iii) Send copies of approved applications to DSCR.

(4) *After 90th day*. If DoD requirement is identified, and item is available, ship item against the requirement unless compelling reasons exist for not shipping item.

(c) The plant clearance officer shall ensure that a copy of the shipping document is submitted to DSCR when IPE

is transferred use-to-use or use-to-storage within DoD.

(d) When GSA sells IPE that is excess to ownership but not to DoD requirements, report the sale to DSCR in accordance with department/agency procedures.

[56 FR 36448, July 31, 1991, as amended at 62 FR 34128, June 24, 1997]

245.608–72 Screening excess automatic data processing equipment (ADPE).

Report ADPE that is Government-owned or leased by the contractor (with Government purchase option or other interests, including use rights) to the Defense Information Systems Agency, Defense Automation Resources Management Program Division (DARMP). DARMP does all required screening, including General Services Administration screening, for ADPE. (See the Defense Automation Resources Management Manual.)

[62 FR 34128, June 24, 1997]

245.609 Donations.

Agencies may donate, with GSA approval and without expense to the United States, certain material not needed by DoD to certain organizations such as veterans' organizations, soldiers' monument associations, State museums, and incorporated educational, not for profit museums. For further guidance, see DoD 4160 .21–M, Defense Reutilization and Disposal Manual.

245.610 Sale of surplus contractor inventory.

245.610–1 Responsibility.

(a) See Subpart 245.73 for sales of contractor inventory under the control of DoD.

245.610–3 Proceeds of sale.

(1) Unless otherwise provided in the contract, the proceeds of any sale, purchase, or retention shall be—

(i) Credited to the Government as part of the settlement agreement;

(ii) Credited to the price or cost of the contract;

(iii) Applied as otherwise directed by the contracting officer; or

(iv) Forwarded to the plant clearance officer. The plant clearance officer—

(A) Within two days after receipt will send the proceeds and a DD Form 1131, Cash Collection Voucher, to the designated disbursing officer. Identify on the DD Form 1131 the contractor name and contract number; or

(B) For contractors with an approved scrap procedure, will ensure the proceeds are appropriately applied to an overhead account. The plant clearance officer may assign a representative who, with the assistance of the contract auditor, shall periodically validate that proceeds from sales of production generated scrap are collected and applied to the appropriate account.

(2) Except as prescribed in paragraph (1)(iv)(B) of this subsection, the plant clearance officer will not close the plant clearance case until verification is received that the credit has, in fact, been properly applied.

245.610–4 Contractor inventory in foreign countries.

(1) Normally, DRMS disposal activities shall be used to dispose of surplus contractor inventory located outside the United States or Canada. However, if authorized by the contracting officer, a contractor may sell or make other disposition of inventory in foreign countries.

(2) Sale or other disposition of foreign inventory by the contractor, including sale to foreign governments, requires that—

(i) The sales contract or other document transferring title include the following certificate:

> The Purchaser certifies that the property covered by this contract will be used in (*name of country*). In the event of resale or export by the Purchaser of any of the property acquired at a price in excess of $1,000 United States dollars or equivalent in other currency at the official exchange rate, the Purchaser agrees to obtain the approval of (*name and address of Contracting Officer*); and

(ii) The contracting officer approve sales contracts, resales, or exports. Approval is permitted only if—

(A) The proposed purchaser's name is not on the list of Parties Excluded from Procurement Programs; and

(B) The sales contract or other document forbids exports by purchasers and

subpurchasers to communist areas (FAR 25.702) or other prohibited destinations.

245.612 Removal and storage.

245.612–3 Special storage at the Government's expense.

(a) Before authorizing storage, the contracting officer shall ensure funds are available to pay for the storage and related tasks. In addition, the contracting officer shall ensure an annual review of the need for continued storage at Government expense.

(b) All storage contracts or agreements shall be fully funded and separately priced and shall include all allocable costs.

245.613 Property disposal determinations.

The plant clearance officer shall—

(1) Record the reason for disposing of the property—

(i) As scrap and salvage;

(ii) By abandonment or destruction; and

(iii) By noncompetitive sale;

(2) Use DD Form 1641, Disposal Determination/Approval, to record disposal determinations; and

(3) File the completed form in the plant clearance case file.

Subpart 245.70—Appointment of Property Administrators and Plant Clearance Officers

245.7001 Selection, appointment, and termination.

(a) The head of a contracting activity for the Defense Logistics Agency, or the head of the contract administration office for other departments and agencies shall select, appoint, or terminate (in writing) property administrators and plant clearance officers.

(b) In selecting qualified property administrators and plant clearance officers, the appointment authority shall consider experience, training, education, business acumen, judgment, character, and ethics.

245.7002 Duties and responsibilities of plant clearance officers.

The plant clearance officer shall—

(a) Instruct the contractor on the preparation of inventory schedules;

(b) Make pre-inventory scrap determinations;

(c) Determine the acceptability of inventory schedules and DD Forms 1342, DoD Property Record;

(d) Prepare and maintain plant clearance cases and disposal documents;

(e) Initiate screening and provide technical support to screeners in the selection of assets;

(f) Conduct or arrange for verification of the following—

(1) Quantity, condition, description, and special processing requirements of property listed on inventory schedules;

(2) Technical and quantitative allocability of property;

(g) Ensure the timely shipment or release by the contractor of property selected for transfer and donation;

(h) Determine the appropriate method of disposal for items not selected for Federal agency use or donation and ensure final plant clearance is accomplished;

(i) Evaluate and monitor the contractor's surplus property sales program;

(j) For individual surplus property sales—

(1) Approve method of sale;

(2) Ensure the sales offerings meet prescribed requirements;

(3) Witness bid openings;

(4) Evaluate bids;

(5) Approve sale awards;

(6) Secure anti-trust clearances, as required;

(7) Recommend the reasonableness of selling expenses; and

(8) Ensure that sales proceeds are collected and property credited;

(k) Monitor ongoing plant clearance actions to ensure delays are minimized and, when necessary, work with the contractor and property administrator to implement improvements;

(l) Evaluate the adequacy of the contractor's property disposal procedures;

(m) Support the property administrator during the compliance analysis of the disposition portion of the contractor's property control procedures;

(n) Report all disposal deficiencies to the property administrator;

(o) Account for all contractor inventory reported for disposal by the contractor and prepare prescribed plant clearance reports; and

(p) Advise and assist the contractor, contracting officer, inventory manager, Federal agencies, and eligible donees in actions related to the proper and timely disposal of contractor inventory.

[57 FR 42632, Sept. 15, 1992]

Subpart 245.71—Plant Clearance Forms

245.7101 Forms.

Use the forms listed below in performance of plant clearance actions.

245.7101–1 Standard Form 97, Certificate of Release of a Motor Vehicle (Agency Record Copy).

Use for transfers, donations, and sales of motor vehicles. The contracting officer shall execute the SF 97 and furnish it to the purchaser.

245.7101–2 DD Form 1149, Requisition and Invoice Shipping Document.

Use for transfer and donation of contractor inventory. Donations of industrial plant equipment may be shipped via DD Form 1149. This form may also be used to consolidate contractor inventory redistribution system-directed shipments going to the same destination.

245.7101–3 DD Form 1348–1, DoD Single Line Item Release/Receipt Document.

Use for shipments of excess industrial plant equipment and contractor inventory redistribution system (CIRS) inventory.

245.7101–4 DD Form 1640, Request for Plant Clearance.

Use to request plant clearance assistance or transfer plant clearance.

Subpart 245.72—Special Instructions

245.7201 Performing inventory verification and determination of allocability.

Use the following guidance for verifying inventory schedules—

(a) *Allocability*. (1) Review contract requirements, delivery schedules, bills of material, and other pertinent material. Determine whether schedules include material which—

(i) Is more than required or reasonably expected to be required for completion of the contract; or

(ii) Might be usable on the current contract, or diverted to other commercial work or Government use.

(2) Review the contractor's—

(i) Recent purchases of similar material;

(ii) Plans for current and scheduled production;

(iii) Stock record entries; and

(iv) Bills of material for similar items.

(b) *Quantity*. Ensure available inventory is in accordance with quantities listed on the inventory schedules. While a complete physical count of each item is not required, perform sufficient checks to ensure accurate quantities.

(c) *Condition*. Ensure the inventory condition matches that shown on the inventory schedules.

245.7202 Establishing a plant clearance case.

(a) Upon receipt of an acceptable inventory schedule or a DD Form 1342, DoD Property Record, the plant clearance officer shall establish a plant clearance case file. The case folder will—

(1) Identify the case number (see 245.7203);

(2) Indicate the contractor's name and contract number;

(3) Note the word ''Termination'' if applicable; and

(4) Consolidate all inventory schedules applicable to one contract at the same location, if possible.

(b) As a minimum, include in the plant clearance case file—

(1) Inventory schedules or DD Form 1342, DoD Property Record, annotated to show all disposal actions;

(2) Copies of documents forwarding inventory schedules to the appropriate screening activity;

(3) Shipping or other instructions and correspondence directing disposition of contractor inventory;

(4) Shipping documents transferring inventory;

(5) Inventory verification survey or other documents showing completion of allocability review;

(6) Forms authorizing donation or sale;

(7) Document showing disposition of proceeds from plant clearance actions; and

(8) Any other documents pertinent to disposal actions, including review board cases, antitrust clearances, and inventory disposal reports.

245.7203 Assigning plant clearance case numbers.

(a) Use a three-part, 11-character number constructed as follows:

(1) Part 1: DoD Activity Address Number (6-character alphanumeric code) assigned to the contract administering activity.

(2) Part 2: Locally assigned 4-character consecutive alphanumeric code, beginning each calendar year with 001 continuing as necessary through ZZZ. The fourth digit is the last number of the calendar year.

(3) Part 3: The 11th character is a single letter identifying the department/agency:

C—Army
Q—Navy
E—Air Force
L—Marine Corps
U—Defense Logistics Agency
N—Defense Nuclear Agency
M—Defense Mapping Agency
S—NASA
D—Other DoD Activities
O—Non-DoD Activities

(b) Record the plant clearance number on DD Form 1635, Plant Clearance Case Register, or mechanized equivalent.

245.7204 Preparing inventory disposal report.

(a) Prepare Standard Form 1424, Inventory Disposal Report, for each completed plant clearance case. For terminated contracts, prepare a consolidated Inventory Disposal Report for each termination docket.

(b) Distribute the report to the contracting officer and to any other activities having an interest in the inventory disposal.

(c) Items on the form are self-explanatory except:

(1) Item 12—Insert net change due to shortages, overages, errors, pricing, or withdrawals, etc. Explain in item 16, Remarks.

(2) Item 14—Insert amount contractor is retaining or purchasing at full acquisition cost (see FAR 45.605–1).

(3) Item 15—Insert acquisition cost and net credit (full credit less approved handling, transportation, and restocking charges for items returned to supplier).

(4) Item 16—Insert the acquisition cost for all transfers accomplished. For lines 16A and 16B, insert subtotals as indicated.

(5) Item 18—Insert acquisition cost and gross proceeds. When approved sale costs are reimbursed from proceeds, show net proceeds in Item 26, Remarks.

(6) Items 20 and 21—Use to identify and report transactions not otherwise identified, such as assets shipped to a Government precious metals reclamation activity, etc. Further explanation may be provided in Item 26, Remarks, if necessary.

(7) Item 25—Totals dispositions must equal amounts on line 13 and must reflect all disposal actions within the case.

(8) Item 26—Show the specific disposition of proceeds reported in Items 14, 15, and 18. Also indicate amounts deleted for specific contractor claims, or applied as a credit to the claim. Explain any entry requiring explanation.

245.7205 Reporting excess and surplus contractor inventory.

(a) Contract administration offices with plant clearance responsibilities will—

(1) Use DD Form 1638, Report of Excess and Surplus Contractor Inventory, or mechanized equivalent, to report the disposition of contractor inventory. Do

not include disposition actions transferred to other offices. Unless headquarters of the administering activity directs otherwise, complete only the column total for each line of this report.

(2) Prepare quarterly reports for periods ending March 31, June 30, September 30, and December 31. Activities preparing manual reports will submit duplicate reports to the headquarters of the administering activity within ten working days after the close of the report period. (Report Control Symbol DD(I&L)(Q)1430).

(b) Items on the report are self-explanatory except:

(1) Line 1—Insert totals from line 7 of the preceding report.

(2) Line 2—Insert net changes due to shortages, overages, errors, or withdrawals (other than purchases or retention at cost).

(3) Line 3—Insert total excess inventory reported by contractors during the report period.

(4) Line 5—Insert total plant clearance cases completed during the report period. Do not report cases as completed until all property is disposed. Acquisition cost must equal line 19.

(5) Line 8—Insert amount retained or withdrawn at full cost.

(6) Line 9—Insert acquisition cost in the ''Acquisition Cost'' column and insert acquisition cost less handling, transportation, or restocking charges, in the ''Proceeds'' column.

(7) Line 10—Insert acquisition cost of all transfers completed during the report period. On lines 10A through 10H, insert subtotals representing transfers to the agency indicated. Exclude amounts on lines 10A through 10H when computing line 19 totals.

(8) Line 12—Insert the acquisition cost and gross proceeds. When sale costs are reimbursed from proceeds, show net proceeds in remarks.

(9) Lines 14 and 15—Used to identify and report other transactions.

(10) Line 18—Insert Section II totals. Line 18 acquisition cost must equal acquisition cost on line 5.

245.7206 Transmitting DD Form 1342, DoD Property Record.

As a minimum, the plant clearance officer will provide the following information in a letter forwarding DD Forms 1342 to DSCR—

(a) Number of DD Forms 1342 included;

(b) Automatic release date;

(c) Screening complete date;

(d) Contractor's name and address;

(e) Contract number;

(f) Contracting activity that awarded the contract under which the contractor acquired the equipment;

(g) Location of the industrial plant equipment;

(h) Total acquisition cost;

(i) A statement advising that the automatic release date will not be extended;

(j) A note stating that—

(1) Request for transfer or shipment must include appropriate fund citations for packing, crating, and handling charges; and

(2) Government bills of lading (GBLs) should be furnished or, if shipment will be accomplished by other than GBL, DSCR must cite transportation funds; and

(k) The plant clearance officer's signature block.

[56 FR 36448, July 31, 1991, as amended at 62 FR 34128, June 24, 1997]

Subpart 245.73—Sale of Surplus Contractor Inventory

245.7301 Policy.

(a) Screening must be completed before any surplus contractor inventory sale.

(b) Except as provided in 245.7307, sales of surplus contractor inventory shall be competitive.

(c) The headquarters of the contract administration activity must approve the use of auctions, spot bids, or retail sales.

245.7302 Competitive sales.

245.7302–1 Property descriptions.

(a) Describe the property as ''used'' or ''unused.'' Indicate if unused property is still in the manufacturer's original containers. Qualifying statements such as ''well-preserved'' or ''repairs required'' are authorized. Do not use condition codes or the terms ''new'' or ''salvage.''

(b) Property descriptions must be accurate and adequate for identification by prospective bidders. Use commercial terminology and original manufacturer and brand name, if applicable.

245.7302–2 Lotting.

(a) Consider combining property into lots when the quantities, value, or nature of the property makes it uneconomical to sell separately.

(b) When lotting is appropriate and economically practical—

(1) Size the lots to encourage bidding by small businesses or individuals;

(2) Lot unused items by make or manufacturer, except when quantities or dollar values are small;

(3) Lot commercially similar items when practicable;

(4) Lot used and unused items separately unless quantities, value, or nature of property makes it uneconomical to sell separately;

(5) Size lots large enough to ensure the selling costs are not disproportionate to the anticipated proceeds.

245.7302–3 Alternate bids.

Offerors may be solicited to bid for groups or for the entire offering by use of the following:

Item _____ (Alternate Bid)

This item consists of all property listed and described in Items _____ to _____, inclusive. Award under this item will be made only if the highest acceptable bid on this item is equal to, or greater than, the total of the highest acceptable bids on Items _____ to _____, inclusive.

245.7302–4 Basis for sale.

(a) *Unit price basis*—requires the offeror to state the bid price in terms of the quantity or weight generally applied in commercial sales of similar items.

(b) *Lot price basis*—requires the offeror to submit a bid for the entire lot. Use the lot price basis of sale only when property cannot be sold by unit measure or the potential sales return is small.

245.7302–5 Mailing lists.

(a) The plant clearance officer will ensure the contractor solicits a sufficient number of bidders to obtain adequate competition.

(b) When large quantities of property, special commodities, or unusual geographic locations are involved, the plant clearance officer is encouraged to obtain additional listings from: Defense Reutilization and Marketing Service, Attn: DRMS–OCR, 74 North Washington Avenue, Battle Creek, MI 49017–3092.

245.7303 Formal bid procedures.

(a) The contractor will use formal invitations for bid unless the plant clearance officer approves use of informal bid procedures.

(b) The contractor shall solicit bids at least 15 calendar days before bid opening to allow adequate opportunity to inspect property and prepare bids.

(c) For large sales, the contractor may use summary lists of items offered as bid sheets with detailed descriptions attached.

(d) In addition to mailing or delivering notice of the proposed sale to prospective bidders, the contractor may, when the results are expected to justify the additional expense—

(1) Display a notice of the proposed sale in appropriate public places.

(2) Publish a sales notice in appropriate trade journals or magazines and local newspapers.

(e) When the acquisition cost of the property to be sold at one time, in one place, is $250,000 or more, the contractor shall send a notice of the proposed sale to: U.S. Department of Commerce, Commerce Business Daily, Sales Section, P.O. Box 5999, Chicago, IL 60680.

(1) The contractor shall send the CBD notice at least 20 days before bid opening, or date of sale.

(2) CBD notices shall be—

(i) Double spaced and in synopsis form suitable for printing;

(ii) Transmitted by fastest mail available; and

(iii) Contain the following information in the order listed:

(A) Name and address of contractor issuing the invitation for bids;

(B) Name or title, address, and telephone number of the official from whom copies of the sales offering and other information can be obtained;

(C) Description of the property to be sold including, when desired, the total estimated acquisition cost;

(D) The number of the invitation or sale;

(E) The date of the sale or bid opening;

(F) The type of sale, i.e., sealed bid, spot bid, auction; and

(G) The location of the property.

(f) The plant clearance officer or representative will witness the bid opening. Within two working days after bid opening, the contractor will submit to the plant clearance officer two copies of an abstract of all bids, signed by the witnessing Government representative.

245.7304 Informal bid procedures.

(a) Upon approval of the plant clearance officer, the contractor may issue informal invitations to bid (orally, telephonically, or by other informal media), provided—

(1) Maximum practical competition is maintained;

(2) Sources solicited are recorded; and

(3) Informal bids are confirmed in writing.

(b) Bids by the contractor or its employees shall be submitted to the plant clearance officer prior to soliciting bids from other prospective bidders.

245.7305 Sale approval and award.

The plant clearance officer will—

(1) Evaluate bids to establish that the sale price is fair and reasonable, taking into consideration—

(i) Knowledge or tests of the market;

(ii) Current published prices for the property;

(iii) The nature, condition, quantity, and location of the property; and

(iv) Information from the Defense Reutilization and Marketing Service.

(2) Approve award to the responsible bidder whose bid is most advantageous to the Government, price and other factors considered. Award shall not be approved to any bidder who is not eligible to enter into a contract with the DoD due to inclusion on the list of Parties Excluded from Procurement Programs. If a compelling reason exists to award to a bidder on the excluded list, the plant clearance officer shall request approval from the headquarters of the administering activity.

(3) Notify the contractor within five working days of the bidder to whom an award shall be made. The contractor shall make the award, collect the proceeds of the sale, and release the property to the purchaser. The contractor shall provide the plant clearance officer with evidence of delivery reflecting actual quantities released to the purchaser.

245.7306 Sales services.

When sale services are needed, the plant clearance officer will document the reasons in the case file and make arrangements directly with the Defense Reutilization and Marketing Service (DRMS) or General Services Administration (GSA). The arrangements will include a requirement to return all proceeds to the plant clearance officer for crediting in compliance with FAR 45.610–3.

245.7307 Non-competitive sales.

245.7307–1 General.

(a) Non-competitive sales include purchases or retention at less than cost by the contractor.

(b) Non-competitive sales may be made when—

(1) The contracting department/agency or the plant clearance officer determines that this method is essential to expeditious plant clearance;

(2) The sale is otherwise justified on the basis of circumstances listed in 245.7307–2;

(3) The Government's interests are adequately protected; and

(4) FAR subpart 1.7 requirements are met.

(c) Non-competitive sales shall be at fair and reasonable prices not less than those reasonably expected under competitive sale.

245.7307–2 Justification.

(a) Conditions justifying non-competitive sales are—

(1) Scientific equipment allocated to terminated research and development contracts with educational institutions;

(2) No acceptable bids received under an advertised competitive sale;

(3) Property value so small that anticipated proceeds would not warrant formal competitive sale;

(4) Sale to States, territories, possessions, political subdivisions thereof, or tax-supported agencies therein, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained;

(5) Specialized nature of the property would not create bidder interest;

(6) Removal of the property would reduce its value or result in disproportionate handling expenses; or

(7) Such action is essential to the Government's interests.

(b) The contracting department/agency will provide the contract administration office the sales justification and any special sales provisions when the department/agency decides to sell production equipment to the contractor by non-competitive sale.

245.7308 Antitrust notification.

(a) When contractor inventory with an estimated fair market value of $3 million or more or any patents, processes, techniques, or inventions, regardless of cost, are sold or otherwise disposed of to private interests notify the Attorney General and the General Services Administration (GSA) of the proposed terms and conditions of disposal. Submit the following information to the Department of Justice and the GSA through the contract administration agency channels. Report Control Symbol DD-ACQ(AR) 1492 applies.

(1) Location and description of property (specify tonnage if scrap);

(2) Proposed sale price (explain if the proposed purchaser was not highest bidder);

(3) Acquisition cost of property;

(4) Manner of sale, indicating whether by—

(i) Sealed bid (specify number of bidders solicited and bids received);

(ii) Auction or spot bid (state how sale was advertised); or

(iii) Negotiation (explain why property was not sold competitively);

(5) Proposed purchaser's name, address, and trade name (if any) under which proposed purchaser is doing business;

(6) If a corporation, provide state and date of incorporation, and name and address of—

(i) Each holder of 25 percent or more of the corporate stock;

(ii) Each subsidiary; and

(iii) Each company under common control with proposed purchaser;

(7) If a partnership, provide—

(i) Name and address of each partner; and

(ii) Other business connections of each partner;

(8) Nature of proposed purchaser's business (indicate whether its scope is local, statewide, regional, or national);

(9) Estimated dollar volume of sales of proposed purchaser (as of latest calendar or fiscal year);

(10) Estimated net worth of proposed purchaser; and

(11) Intended use of property.

(b) Do not dispose of property until the Attorney General determines whether the proposed disposal action would tend to create or maintain a situation inconsistent with the antitrust laws.

(c) If the Attorney General advises that the proposed disposition is inconsistent with the antitrust laws, do not continue with the proposed disposition.

(d) Under non-competitive sales, the prospective purchaser shall be informed that final consummation of the sale is subject to determination by the Attorney General.

(e) Under competitive or non-competitive sales, the purchaser is required to provide the information required in paragraph (a) of this subsection.

[56 FR 36448, July 31, 1991, as amended at 57 FR 42633, Sept. 15, 1992; 57 FR 53601, Nov. 12, 1992]

245.7309 Mandatory terms and conditions—formal invitations.

Sale by formal invitation shall include, as a minimum, the terms and conditions in this section.

245.7309–1 Inspection.

The Bidder is invited to inspect the property prior to submitting a bid. Property will be available for inspection at the places and times specified in the Invitation. Failure to inspect property does not constitute grounds for the withdrawal of a bid after opening.

245.7309–2 Condition and location of property.

(a) Unless otherwise specifically provided in the Invitation, all property is offered for sale ''as is'' and ''where is.'' If the Invitation provides that the Contractor will load, then ''where is'' means f.o.b. conveyance at the point specified in the Invitation.

(b) The description is based on the best available information. However, the Contractor makes no warranty, express or implied, as to quantity, kind, character, quality, weight, size, or description of the property or its fitness for any use or purpose.

(c) Except as provided in Conditions 245.7306–8, Variations in Quantity or Weight, and 245.7306–10, Risk of Loss, no request for adjustment in price or for rescission of the sale will be considered. This is not a sale by sample.

245.7309–3 Consideration of bids.

(a) Bidder agrees that this bid is firm and irrevocable within the acceptance period specified in the Invitation (or, if not specified, not less than ten or more than 60 days).

(b) The right is reserved to reject any or all bids, to waive any technical defects in bids, and, unless otherwise specified in the offering or by the Bidder, to accept any one item or group of items in the bid. Unless the invitation provides otherwise, bids—

(1) May be on any or all items;

(2) Must be submitted on the unit basis specified for that item;

(3) Must cover the total number of units designated for that item; and

(4) Unit prices govern.

245.7309–4 Payment.

(a) Purchaser agrees to pay the full purchase price for awarded property at the prices quoted in the bid. Unless an adjustment is required pursuant to Condition 245.7306–8, Variations in Quantity or Weight, payment must be made within the time specified for removal and prior to delivery of any of the property. In the event that any adjustment is made, payment must be made immediately after such adjustment.

(b) The full purchase price, or balance if a bid deposit was required, shall be paid to the Contractor in cash or by certified check, cashier's check, traveler's check, bank draft, or postal or express money order. The Contractor is not required to extend credit to any purchaser.

(c) The Contractor reserves the right to apply any bid deposits made under this Invitation by a bidder against any amounts due under a contract awarded by the Contractor under this Invitation. If the total sum due to the contractor is less than the amount deposited with the bid, the difference shall be promptly refunded. Deposits accompanying bids which are not accepted shall be promptly returned.

245.7309–5 Title.

(a) Unless otherwise specified in the Invitation, title to property sold under this Invitation shall vest in the Purchaser when full payment is made. If the Invitation provides for loading by the Contractor, title shall not vest until payment and loading are completed.

(b) A Standard Form 97, Certificate of Release of a Motor Vehicle, (or a State certificate of title) shall be furnished for motor vehicles and motor-propelled or motor-drawn equipment requiring licensing.

245.7309–6 Delivery and removal of property.

(a) Unless otherwise specified in the Invitation, the Purchaser shall be entitled to obtain the property upon vesting of title in the Purchaser. Delivery shall be made at the designated location, and removal will be at the Purchaser's expense within the time frame specified in the Invitation or any additional time allowed by the Contractor.

(b) The Purchaser shall reimburse the Contractor for any damage to the Contractor's property caused by Purchaser's removal operations. If additional time is required to remove the property, the Contractor, without limiting any other rights, may require the Purchaser to pay reasonable storage charges.

245.7309–7 Default.

If the successful Bidder fails to make full payment, remove property by the specified date, or comply with any other terms and conditions of sale, the

Contractor reserves the right to sell or otherwise dispose of any or all such property and to charge losses and incidental expenses to the defaulting Bidder. Bid deposits received (if required in the Invitation) shall be applied against such losses and expenses.

245.7309–8 Variations in quantity or weight.

When property is sold on a ''unit price'' basis, the Contractor reserves the right to vary by up to 15 percent the quantity or weight listed in the Invitation and the Purchaser agrees to accept delivery of any quantity or weight within these limits. The purchase price shall be adjusted in accordance with the unit price and on the basis of the quantity or weight delivered.

245.7309–9 Weighing.

(a) When weighing is necessary to determine the exact purchase price, the Purchaser shall arrange for and pay all weighing expenses. When removal is by truck, weighing shall be subject to supervision and accomplished on—

(1) Contractor scales;

(2) Certified scales; or

(3) Other scales acceptable to both parties.

(b) When removal is by rail, weighing shall be on railroad scales or by other means acceptable to the railroad for freight purposes. The Purchaser shall pay switching charges.

245.7309–10 Risk of loss.

The Contractor is responsible for reasonable care and protection of the property until the date specified for removal. All risk of loss, damage, or destruction from any cause whatsoever shall be borne by the Purchaser after passage of title.

245.7309–11 Liability.

Contractor and Government liability, when liability has been established, shall not exceed the refund of any portion of the purchase price already received by the Contractor.

245.7309–12 Oral statements.

Any oral statement by the Contractor changing or supplementing the contract or any condition thereof is unauthorized.

245.7309–13 Eligibility of bidders.

The Bidder shall certify that the Bidder is not—

(a) A civilian employee of the Department of Defense or the United States Coast Guard whose duties include any functional or supervisory responsibility for disposal of contractor inventory;

(b) A member of the United States Armed Forces, including the Coast Guard, whose duties include any functional or supervisory responsibility for disposal of contractor inventory;

(c) An agent, employee or immediate member of the household of personnel in paragraphs (a) and (b).

245.7309–14 Claims liability.

The Purchaser or Bidder agrees to save the Contractor and Government harmless from any and all claims, demands, actions, debts, liabilities, judgments, costs, and attorney's fees arising out of, claimed on account of, or in any manner predicated upon loss of or damage to property of, and injuries to or the death of any and all persons whatsoever, in any manner caused or contributed to by the Purchaser or Bidder, their agents, servants or employees, while in, upon, or about the sale site on which the property sold or offered for sale is located, or while going to or departing from such areas; and to save the Contractor and Government harmless from and on account of damages of any kind which the Contractor may suffer as the result of the acts of any of the Purchaser's agents, servants, or employees while in or about the said sites.

245.7310 Special term and conditions.

When necessary, include the special conditions of this section in formal invitations.

245.7310–1 Demilitarization.

When demilitarization of property is required, whether on or off contractor or Government premises, the invitation must include the following clause:

(a) *Demilitarization.*

Item(s) _____ require demilitarization by the Purchaser in the manner and to the degree set forth below:

(1) For property located in the United States insert item number(s) and specific demilitarization requirements for item(s) shown in Attachment 1, Part 2 of Defense, Demilitarization Manual;

(2) For property located outside the United States, insert item number(s) and specific demilitarization requirements for item(s) shown in Attachment 1, Part 3 of DoD 4160.21–M–1, Defense Demilitarization Manual.

(b) *Demilitarization on Government Premises.* Property requiring demilitarization shall not be removed, and title shall not pass to the Purchaser, until demilitarization has been completed and approved by an authorized Contractor and Government representative. Demilitarization will be accomplished as specified in the contract. Component parts vital to the military or lethal purpose of the property shall be rendered unusable. The Purchaser agrees to assume all cost incident to the demilitarization and to restore the working area to its present condition after removing the demilitarized property.

(c) *Demilitarization on Non-Government Premises.* Property requiring demilitarization shall be demilitarized by the Purchaser under supervision of qualified Department of Defense personnel. Title shall not pass to the Purchaser until demilitarization has been completed by the Purchaser and approved by an authorized Contractor and Government representative. Demilitarization will be accomplished as specified in the contract. Component parts vital to the military or lethal purpose of the property shall be rendered unusable. The Purchaser agrees to assume all costs incident to the demilitarization.

(d) *Failure to Demilitarize.* If the Purchaser fails to demilitarize the property as specified in the contract, the Contractor may, upon giving ten days written notice from date of mailing to the Purchaser—

(1) Repossess, demilitarize, and return the property to the Purchaser. The Purchaser hereby agrees to pay to the Contractor, prior to the return of the property, all costs incurred by the Contractor in repossessing, demilitarizing, and returning the property to the Purchaser.

(2) Repossess, demilitarize, and resell the property, and charge the defaulting Purchaser will all excess costs incurred by the Contractor. The Contractor shall deduct these costs from the purchase price and refund the balance of the purchase price, if any, to the Purchaser. In the event the excess costs exceed the purchase price, the defaulting Purchaser hereby agrees to pay these excess costs to the Contractor.

(3) Repossess and resell the property under similar terms and conditions. In the event this option is exercised, the Contractor shall charge the defaulting Purchaser with all excess costs incurred by the Contractor. The Contractor shall deduct these excess costs from the original purchase price and refund the balance of the purchase price, if any, to the defaulting Purchaser. Should the excess costs to the Contractor exceed the purchase price, the defaulting Purchaser hereby agrees to pay these excess costs to the Contractor.

245.7310–2 Performance bond.

Performance bonds are required when work, other than loading, is to be performed by the purchaser and a bond is considered necessary to ensure performance. Generally, performance bonds shall be 100 percent of the estimated cost of the work to be performed. If a 100 percent performance bond would be disadvantageous to the Contractor or to the Government, the amount may be reduced to not less than 50 percent of the estimated cost of the work. Include the following condition when performance bonds are required:

PERFORMANCE BOND

Within ten days after notice of award, the Purchaser shall furnish a performance bond in the sum of $_____ to cover the Purchaser's obligations. Such bond shall remain in full force and effect during the term of the contract and any extensions as may be agreed upon. The Purchaser shall not be permitted to begin performance until the bond has been received.

245.7310–3 Liability and insurance.

When the work to be performed by the purchaser warrants, use the following:

LIABILITY AND INSURANCE

The Purchaser shall at the Purchaser's own expense purchase and maintain during the term of the contract insurance as follows:

(a) Standard workers' compensation and employer's liability insurance required under State and Federal statutes. However, the Contractor may waive this requirement upon receipt of satisfactory evidence that the Purchaser is qualified as a self-insurer under applicable provisions of law.

(b) Bodily injury liability insurance in an amount not less than $300,000 for any one occurrence; and

(c) Property damage liability insurance.

245.7310–4 Dangerous property.

The following warning shall be included when it cannot be certified that the property is completely harmless:

DANGEROUS PROPERTY

Purchasers are warned that the property purchased may contain items of an explosive, toxic, or inflammable nature, notwithstanding reasonable care exercised by the Contractor to render the property harmless. The Contractor and the Government assume no liability for damage to the property of the Purchaser, or for personal injuries or disabilities to the Purchaser or the Purchaser's employees, or to any other person, arising from or incident to the purchase of the property, or its use or disposition by the Purchaser. The Purchaser shall save the Contractor and the Government harmless from any and all such claims.

245.7310–5 Controlled substances.

The sale of controlled substances, e.g., narcotics, stimulants, depressants, or hallucinogenic drugs, shall be subject to the following special conditions:

(a) *Controlled Substances.* Bids will be rejected unless the Bidder submits the following certification with its bid:

The undersigned represents and warrants that it is registered under The Comprehensive Drug Abuse Prevention and Control Act of 1970, and is authorized under the law and by the Attorney General, U.S. Department of Justice (Bureau of Narcotics and Dangerous Drugs) to buy controlled substances as a medical practitioner, dealer or manufacturer of controlled substances.

(b) *Narcotic Drugs and Chemicals.* Bids will be rejected unless the Bidder submits the following certification with its bid:

The undersigned represents and warrants that it is registered under Federal narcotics laws and is authorized by law and by the Bureau of Narcotics, United States Treasury Department, as a manufacturer of narcotics.

245.7310–6 Radioactive material.

The following shall be used whenever the property offered for sale is capable of emitting ionized radiation:

RADIOACTIVE MATERIAL

Purchasers are warned that the property may be capable of emitting ionized radiation. The Contractor and the Government assume no liability for damage to the property of the Purchaser, or for personal injuries or disabilities to the Purchaser or the Purchaser's employees, or to any other person arising from or incident to the purchase of the property or its use or disposition by the Purchaser. The Purchaser shall hold the Contractor and the Government harmless from all such claims. The Purchase should warn possessors or users of the property that it may be capable of emitting ionized radiation.

245.7310–7 Scrap warranty.

The following condition shall be used whenever property, other than production scrap, is offered for sale as scrap:

SCRAP WARRANTY

The Purchaser represents and warrants that the property will be used only as scrap, and will not be resold until—

(a) Scrapping has been accomplished; or

(b) The Purchaser obtains an identical warranty from any subsequent purchaser.

245.7310–8 Antitrust clearance.

When property with an acquisition cost of $3 million or more is to be sold, include the following in the invitation:

ANTITRUST

When the property offered for sale has an acquisition cost of $3 million or more, or consists of patents, processes, techniques, or inventions, irrespective of cost, the successful Bidder shall be required to furnish additional information and shall allow up to 60 days for acceptance of its bid. Award shall be made only upon advice from the Department of Justice that the proposed sale would not create or maintain a situation inconsistent with the antitrust laws.

245.7311 Optional conditions.

The following special conditions of sale may be added at the option of the contractor:

245.7311–1 Sales and use tax liability.

For purchases of property subject to a state sales or use tax, a special condition of sale may stipulate that the Purchaser shall pay and the Contractor shall collect the amount of the tax, which shall be itemized separately on the billing document.

245.7311–2 Safety, security, and fire regulations.

245.7311–3 Bid deposits.

245.7311–4 Other special conditions.

Other special conditions considered necessary by the Contractor are subject to the prior approval of the plant clearance officer. Approval will normally be granted provided the prescribed conditions of sale are not altered or affected and the interest of the Government is not adversely affected.

PART 246—QUALITY ASSURANCE

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AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36460, July 31, 1991, unless otherwise noted.

Subpart 246.1—General

246.101 Definitions.

Metrology is the science of weights and measures used to determine conformance to technical requirements including the development of standards and systems for absolute and relative measurements.

Quality means the composite of material attributes including performance features and characteristics of a product or service to satisfy a given need.

Quality assurance is a planned and systematic pattern of all actions necessary to provide adequate confidence that adequate technical requirements are established; products and services conform to established technical requirements; and satisfactory performance is achieved.

Quality audit is a systematic examination of the acts and decisions with respect to quality in order to independently verify or evaluate the operational requirements of the quality

program or the specification or contract requirements of the product or service.

Quality program is a program which is developed, planned, and managed to carry out cost-effectively all efforts to effect the quality of materials and services from concept exploration and definition through demonstration and validation, engineering and manufacturing development, production and deployment, and operations and support.

[56 FR 36460, July 31, 1991, as amended at 60 FR 33145, June 27, 1995]

246.102 Policy.

Departments and agencies shall also—

(1) Develop and manage a cost effective quality program to ensure that contract performance conforms to specified requirements. Apply the quality program to all contracts for services and products designed, developed, purchased, produced, stored, distributed, operated, maintained, or disposed of by contractors.

(2) Conduct quality audits to ensure the quality of products and services meet contractual requirements.

(3) Base the type and extent of Government contract quality assurance actions on the particular acquisition.

(4) Provide contractors the maximum flexibility in establishing efficient and effective quality programs to meet contractual requirements. Contractor quality programs may be modeled on military, commercial, national, or international quality standards.

[56 FR 36460, July 31, 1991, as amended at 60 FR 33145, June 27, 1995]

246.103 Contracting office responsibilities.

The contracting office may conduct product-oriented surveys and evaluations to determine—

(1) The adequacy of the technical requirements relating to quality; and

(2) Product conformance to design intent. Consider conducting the surveys and evaluations in conjunction with the activity responsible for technical requirements.

(a) Contracting offices are also responsible for—

(i) Assisting the technical activity in improving the quality requirements for contracts when first identified for competitive acquisition; and

(ii) Assisting in determining the cause of problems noted in user experience reports.

(b) The contracting office must coordinate with the quality assurance activity before changing any quality requirement.

(c) The activity responsible for technical requirements may prepare instructions covering the type and extent of Government inspections for acquisitions that are complex, have critical applications, or have unusual requirements.

(i) In preparing the instructions, the technical activity shall consider, as applicable—

(A) The past quality history of the contractor;

(B) The criticality of the material procured in relation to its intended use, considering such factors as—

(*1*) Reliability;

(*2*) Safety;

(*3*) Interchangeability; and

(*4*) Maintainability;

(C) Problems encountered in the development of the material;

(D) Problems encountered in other procurements of the same or similar material;

(E) Available feed-back data from contract administration, receiving, testing, or using activities; and

(F) The experience of other contractors in overcoming manufacturing problems.

(ii) The instructions shall—

(A) Be kept to a minimum;

(B) Comply with 246.470–2; and

(C) Be prepared on a contract-by-contract basis.

(iii) The instructions shall not—

(A) Serve as a substitute for incomplete contract quality requirements;

(B) Impose greater inspection requirements than are in the contract;

(C) Use broad or general designations such as—

(*1*) All requirements;

(*2*) All characteristics; or

(*3*) All characteristics in the classification of defects;

(D) Be used for routine administrative procedures; or

(E) Specify continued inspection requirements when statistically sound

sampling will provide an adequate degree of protection.

(iv) After issuing the instructions, the technical activity—

(A) Must provide the contract administration office available information regarding those factors which resulted in the requirement for Government inspection;

(B) Must periodically analyze the need to continue, change, or discontinue the instructions; and

(C) Must advise the contract administration office of the results of the periodic analyses.

246.104 Contract administration office responsibilities.

(f) The contract administration office shall continue to follow any specific written instructions received from the contracting office until the contracting office acts on a recommendation.

Subpart 246.2—Contract Quality Requirements

246.202 Types of contract quality requirements.

246.202–4 Higher-level contract quality requirements.

(1) Higher-level contract quality requirements are used in addition to a standard inspection requirement.

(2) Higher-level contract quality requirements, including nongovernment quality system standards adopted to meet DoD needs, are listed in the DoD Index of Specifications and Standards.

[60 FR 33145, June 27, 1995. Redesignated and amended at 60 FR 61599, Nov. 30, 1995]

246.203 Criteria for use of contract quality requirements.

(c) *Criticality*. Acquisitions of critical items, whether peculiar or common, shall have contract quality requirements.

Subpart 246.3—Contract Clauses

246.370 Material inspection and receiving report.

(a) Use the clause at 252.246–7000, Material Inspection and Receiving Report, in solicitations and contracts when there will be separate and distinct deliverables, even if the deliverables are not separately priced.

(b) When contract administration is retained by the contracting office, the clause at 252.246–7000, Material Inspection and Receiving Report, is not required for—

(1) Contracts awarded using small and other simplified purchase procedures (FAR part 13);

(2) Negotiated subsistence contracts;

(3) Contracts for fresh milk and related fresh dairy products;

(4) Contracts for which the deliverable is a scientific or technical report;

(5) Research and development contracts not requiring the delivery of separately priced end items;

(6) Base, post, camp, or station contracts;

(7) Contracts in overseas areas when the preparation and distribution of the DD Form 250, Material Inspection and Receiving Report, by the contractor would not be practicable. In these cases, arrange for the contractor to provide the information necessary for the contracting office to prepare the DD Form 250;

(8) Contracts for services when hardware is not acquired as an item in the contract; and

(9) Indefinite delivery type contracts placed by central contracting offices which authorize only base, post, camp, or station activities to issue orders.

Subpart 246.4—Government Contract Quality Assurance

246.406 Foreign governments.

(1) *Quality assurance among North Atlantic Treaty Organization (NATO) countries*—(i) *NATO Standardization Agreement (STANAG) 4107, Mutual Acceptance of Government Quality Assurance.* (A) STANAG 4107—

(*1*) Contains procedures, terms, and conditions under which one NATO country will perform quality assurance for another NATO country, or for a NATO organization.

(*2*) With certain reservations, has been ratified by the U.S. and other nations in NATO.

(B) Departments and agencies—

(*1*) May ask NATO countries to perform quality assurance;

(*2*) Shall perform quality assurance when requested by a NATO country.

(C) The U.S. Government reserves the right to require reimbursement for work it performs for other NATO countries and organizations.

(ii) *NATO Standardization Agreement (STANAG) 4108, Allied Quality Assurance Publications.* (A) STANAG 4108 provides for the application of Allied Quality Assurance Publications (AQAPs).

(B) Its annexes list AQAPs and the criteria for applying those AQAPs which are required in contracts between NATO countries.

(2) *International military sales (non-NATO).* Departments and agencies shall—

(i) Perform quality assurance services on international military sales contracts or in accordance with existing agreements;

(ii) Ensure conformance to the technical and quality requirements of international military sales contracts;

(iii) Inform host or U.S. Government personnel and contractors on the use of quality assurance publications;

(iv) Specify appropriate quality requirements in contracts awarded to other countries; and

(v) Delegate quality assurance to the host government when satisfactory services are available.

(3) *Reciprocal quality assurance agreements.* A Memorandum of Understanding (MOU) with a foreign country may contain an annex that provides for the reciprocal performance of quality assurance services. MOUs should be checked to determine whether such an annex exists for the country where a defense contract will be performed. (See subpart 225.74 for more information about MOUs.)

246.407 Nonconforming supplies or services.

(1) Contracting officers shall use the following MIL–STD–109 definitions in determining conformance with contract requirements—

(i) *Critical nonconformance* is a nonconformance that judgment and experience indicate—

(A) Is likely to result in hazardous or unsafe conditions for individuals using, maintaining, or depending upon the supplies or services; or

(B) Is likely to prevent performance of a vital agency mission.

(ii) *Major nonconformance* is a nonconformance, other than critical, that is likely to result in failure, or to materially reduce the usability of the supplies or services for their intended purpose.

(iii) *Minor nonconformance* is a nonconformance that is not likely to materially reduce the usability of the supplies or services for their intended purpose, or is a departure from established standards having little bearing on the effective use or operation of the supplies or services.

(2) Contracting officers shall ensure that—

(i) Nonconformances are identified; and

(ii) The significance of a nonconformance is established when considering the acceptability of supplies or services which do not meet contract requirements.

(f) If nonconforming material or services are discovered after acceptance, the defect appears to be the fault of the contractor, any warranty has expired, and there are no other contractual remedies, the contracting officer—

(i) Shall notify the contractor in writing of the nonconforming material or service;

(ii) Shall request that the contractor repair or replace the material, or perform the service, at no cost to the Government; and

(iii) May accept consideration if offered. For guidance on solicitation of a refund, see subpart 242.71.

246.408 Single-agency assignments of Government contract quality assurance.

246.408–70 Subsistence.

(a) The Surgeons General of the military departments are responsible for—

(1) Acceptance criteria;

(2) Technical requirements; and

(3) Inspection procedures needed to assure wholesomeness of foods.

(b) The contracting office may designate any Federal activity, capable of assuring wholesomeness and quality in food, to perform quality assurance for subsistence contract items. The designation may—

(1) Include medical service personnel of the military departments; and

(2) Be on a reimbursable basis.

246.408–71 Aircraft.

(a) The Federal Aviation Administration (FAA) has certain responsibilities and prerogatives in connection with some commercial aircraft and of aircraft equipment and accessories (Pub. L. 85–726 (72 Stat 776, 49 U.S.C. 1423)). This includes the issuance of various certificates applicable to design, manufacture, and airworthiness.

(b) FAA evaluations are not a substitute for normal DoD evaluations of the contractor's quality assurance measures. Actual records of FAA evaluations may be of use to the contract administration office (CAO) and should be used to their maximum advantage.

(c) The CAO shall ensure that—

(1) The supplies and services conform to the terms of the contract; and

(2) The contractor possesses any required FAA certificates and approvals prior to acceptance.

246.408–72 Construction projects.

(a) The department or agency responsible for the construction of a building or other structure is normally responsible for on-site inspection.

(b) The contract administration office performs quality assurance for construction materials and supplies acquired for military and civil works projects.

(c) The offices responsible for on-site inspection and for quality assurance of materials and supplies must coordinate their efforts to ensure the compatibility of buildings and structures and installed equipment.

246.470 Government contract quality assurance actions.

246.470–1 Planning.

In systematically planning Government contract quality assurance actions used to determine a contractor's compliance with contract quality requirements, consider—

(a) The relative importance of the product; and

(b) The variety of tasks required of the available resources.

246.470–2 Evidence of conformance.

Use objective evidence of quality to determine conformance to contract quality requirements.

246.470–3 Assessment of additional costs.

(a) Under the clause at FAR 52.246–2, Inspection of Supplies—Fixed-Price, the Government may charge the contractor for additional costs incurred by the Government due to delays in tests or inspections caused by the contractor, or due to the necessity for reinspection or retest. This action may be necessary when—

(1) Supplies are not ready at the time such inspection and test are requested by the contractor; or

(2) Reinspection or retest is necessitated by prior rejection.

(b) After considering the factors in paragraph (d) of this subsection, the quality assurance representative (QAR) may believe that the assessment of additional costs is warranted. If so, the representative shall recommend that the contracting officer take the necessary action and provide a recommendation as to the amount of additional costs. Costs are based on the applicable Federal agency, foreign military sale, or public rate in effect at the time of the delay, reinspection, or retest.

(c) If the contracting officer agrees with the QAR, the contracting officer shall—

(1) Notify the contractor, in writing, of the determination to exercise the Government's right under the clause at FAR 52.246–2, Inspection of Supplies—Fixed Price; and

(2) Demand payment of the costs in accordance with the collection procedures contained in FAR subpart 32.6.

(d) In making a determination to assess additional costs, the contracting officer shall consider—

(1) The frequency of delays, reinspection, or retest under both current and prior contracts;

(2) The cause of such delay, reinspection, or retest; and

(3) The expense of recovering the additional costs.

246.470–4 Maintenance of Government records.

The contract administration office shall maintain suitable records of the quality assurance performance of contractors.

246.470–5 Quality evaluation data.

The contract administration office shall establish a system that provides, as a minimum, for the collection, evaluation, and use of—

(a) Quality data developed by the contractor during performance;

(b) Data developed by the Government through contract quality assurance actions; and

(c) Reports by users and customers.

246.471 Authorizing shipment of supplies.

(a) *General.* (1) Ordinarily, a representative of the contract administration office signs or stamps the shipping papers that accompany Government source-inspected supplies to release them for shipment. This is done for both prime and subcontracts.

(2) An alternative procedure (see paragraph (b) of this section) permits the contractor to assume the responsibility for releasing the supplies for shipment.

(3) The alternative procedure may include prime contractor release of supplies inspected at a subcontractor's facility.

(4) The use of the alternative procedure releases DoD manpower to perform technical functions by eliminating routine signing or stamping of the papers accompanying each shipment.

(b) *Alternative Procedures—Contract Release for Shipment.* (1) The contract administration office may authorize, in writing, the contractor to release supplies for shipment when—

(i) The stamping or signing of the shipping papers by a representative of the contract administration office interferes with the operation of the Government contract quality assurance program or takes too much of the Government representative's time;

(ii) There is sufficient continuity of production to permit the Government to establish a systematic and continuing evaluation of the contractor's control of quality; and

(iii) The contractor has a record of satisfactory quality, including that pertaining to preparation for shipment.

(2) The contract administration office shall withdraw, in writing, the authorization when there is an indication that the conditions in paragraph (b)(1) of this subsection no longer exist.

(3) When the alternative procedure is used, require the contractor to—

(i) Type or stamp, and sign, the following statement on the required copy or copies of the shipping paper(s), or on an attachment—

The supplies in this shipment—

1. Have been subjected to and have passed all examinations and tests required by the contract;

2. Were shipped in accordance with authorized shipping instructions;

3. Conform to the quality, identity, and condition called for by the contract; and

4. Are of the quantity shown on this document.

This shipment was—

1. Released in accordance with section 246.471 of the Defense FAR Supplement; and

2. Authorized by (name and title of the authorized representative of the contract administration office) in a letter dated (date of authorizing letter). (Signature and title of contractor's designated official.)

(ii) Release and process, in accordance with established instructions, the DD Form 250, Material Inspection and Receiving Report, or other authorized receiving report.

246.472 Inspection stamping.

(a) There are two DoD quality inspection approval marking designs (stamps). Both stamps are used—

(1) Only by, or under the direct supervision of, the Government representative; and

(2) For both prime and subcontracts.

(b) The designs of the two stamps and the differences in their uses are—

(1) *Partial (Circle) Inspection Approval Stamp.* (i) This circular stamp is used to identify material inspected for conformance to only a portion of the contract quality requirements.

(ii) Further inspection is to be performed at another time and/or place.

(iii) Material not inspected is so listed on the associated DD Form 250 (Material Inspection and Receiving Report), packing list, or comparable document.

(2) *Complete (Square) Inspection Approval Stamp.* (i) This square stamp is used to identify material completely inspected for all contract quality requirements at source.

(ii) The material satisfies all contract quality requirements and is in complete conformance with all contract quality requirements applicable at the time and place of inspection.

(iii) Complete inspection approval establishes that material which once was partially approved has subsequently been completely approved.

(iv) One imprint of the square stamp voids multiple imprints of the circle stamp.

(c) The marking of each item is neither required nor prohibited. Ordinarily, the stamping of shipping containers, packing lists, or routing tickets serves to adequately indicate the status of the material and to control or facilitate its movement.

(d) Stamping material does not mean that it has been accepted by the Government. Evidence of acceptance is ordinarily a signed acceptance certificate on the DD Form 250, Material Inspection and Receiving Report.

(e) Policies and procedures regarding the use of National Aeronautics and Space Administration (NASA) quality status stamps are contained in NASA publications. When requested by NASA centers, the DoD inspector shall use NASA quality status stamps in accordance with current NASA requirements.

Subpart 246.6—Material Inspection and Receiving Reports

246.670 General.

(a) Material Inspection and Receiving Reports (MIRRs) are used to document—

(1) Contract quality assurance;

(2) Acceptance of supplies and services; and

(3) Shipments.

(b) MIRRs are used by activities responsible for—

(1) Receiving;

(2) Status control;

(3) Technical requirements;

(4) Contracting;

(5) Inventory control;

(6) Requisitioning; and

(7) Payment.

246.671 Procedures.

See Appendix F, Material Inspection and Receiving Report, for procedures and instructions for the use, preparation, and distribution of—

(a) The Material Inspection and Receiving Report (DD Form 250 series) and;

(b) Supplier's commercial shipping/packing lists used to evidence Government contract quality assurance.

Subpart 246.7—Warranties

246.701 Definitions.

Acceptance, as defined in FAR 46.701 and as used in this subpart and in the warranty clauses at FAR 52.246–17, Warranty of Supplies of a Noncomplex Nature; FAR 52.246–18, Warranty of Supplies of a Complex Nature; FAR 52.246–19, Warranty of Systems and Equipment Under Performance Specifications or Design Criteria; and FAR 52.246–20, Warranty of Services, includes the execution of an official document (e.g., DD Form 250, Material Inspection and Receiving Report) by an authorized representative of the Government.

Defect, as used in this subpart, means any condition or characteristic in any supply or service furnished by the contractor under the contract that is not in compliance with the requirements of the contract.

246.702 General.

(c) Departments and agencies shall establish procedures to track and accumulate data on warranty costs.

246.703 Criteria for use of warranties.

The use of warranties in the acquisition of weapon systems is mandatory (10 U.S.C. 2403) unless a waiver is authorized (see 246.770–8).

(b) *Cost.* Contracting officers may include the cost of a warranty as part of an item's price or as a separate contract line item.

246.704 Authority for use of warranties.

The chief of the contracting office must approve use of a warranty, except in acquisitions for—

(1) Weapon systems (see 246.770);

(2) Commercial items (see FAR 46.709);

(3) Technical data, unless the warranty provides for extended liability (see 246.708);

(4) Supplies and services in fixed-price type contracts containing quality assurance provisions that reference higher-level contract quality requirements (see 246.202–4); or

(5) Supplies and services in construction contracts when using the warranties that are contained in Federal, military, or construction guide specifications.

[56 FR 36460, July 31, 1991, as amended at 60 FR 33145, June 27, 1995; 60 FR 61599, Nov. 30, 1995]

246.705 Limitations.

(a) Warranties in the clause at 252.246–7001, Warranty of Data, are also an exception to the prohibition on use of warranties in cost-reimbursement contracts.

246.706 Warranty terms and conditions.

(b)(5) *Markings.* Use MIL Standard 129, Marking for Shipments and Storage, and MIL Standard 130, Identification Marking of U.S. Military Property, when marking warranty items.

246.708 Warranties of data.

Obtain warranties on technical data when practicable and cost effective. Consider the factors in FAR 46.703 in deciding whether to obtain warranties of technical data. Consider the following in deciding whether to use extended liability provisions—

(1) The likelihood that correction or replacement of the nonconforming data, or a price adjustment, will not give adequate protection to the Government; and

(2) The effectiveness of the additional remedy as a deterrent against furnishing nonconforming data.

246.710 Contract clauses.

(1) Use a clause substantially the same as the clause at 252.246–7001, Warranty of Data, in solicitations and contracts that include the clause at 252.227–7013, Rights in Technical Data and Computer Software, and there is a need for greater protection or period of liability than provided by other contract clauses, such as the clauses at—

(i) FAR 52.246–3, Inspection of Supplies—Cost-Reimbursement;

(ii) FAR 52.246–6, Inspection—Time-and-Material and Labor-Hour;

(iii) FAR 52.246–8, Inspection of Research and Development—Cost-Reimbursement; and

(iv) FAR 52.246–19, Warranty of Systems and Equipment Under Performance Specifications or Design Criteria.

(2) Use the clause at 252.246–7001, Warranty of Data, with its Alternate I when extended liability is desired and a fixed price incentive contract is contemplated.

(3) Use the clause at 252.246–7001, Warranty of Data, with its Alternate II when extended liability is desired and a firm fixed price contract is contemplated.

(4) Use the clause at 252.246–7002, Warranty of Construction (Germany), in solicitations and contracts for construction when a fixed-price contact will be awarded and contract performance will be in Germany.

[56 FR 36460, July 31, 1991, as amended at 62 FR 34128, June 24, 1997]

246.770 Warranties in weapon system acquisitions.

This section sets forth policies and procedures for use of warranties in contracts for weapon system production.

246.770–1 Definitions.

As used in this section—

(a) *At no additional cost to the Government* means—

(1) At no increase in price for firm fixed price contracts;

(2) At no increase in target or ceiling price for fixed price incentive contracts (see also FAR 46.707); or

(3) At no increase in estimated cost or fee for cost-reimbursement contracts.

(b) *Design and manufacturing requirements* means structural and engineering plans and manufacturing particulars, including precise measurements, tolerances, materials and finished product tests for the weapon system being produced.

(c) *Essential performance requirements* means the operating capabilities and

maintenance and reliability characteristics of a weapon system that the agency head determines to be necessary to fulfill the military requirement.

(d) *Initial production quantity* means the number of units of a weapon system contracted for in the first program year of full-scale production.

(e) *Mature full-scale production* means follow-on production of a weapon system after manufacture of the lesser of the initial production quantity or one-tenth of the eventual total production quantity.

(f) *Weapon system* means a system or major subsystem used directly by the Armed Forces to carry out combat missions.

(1) The term includes, but is not limited to, the following (if intended for use in carrying out combat missions)—

(i) Tracked and wheeled combat vehicles;

(ii) Self-propelled, towed and fixed guns, howitzers and mortars;

(iii) Helicopters;

(iv) Naval vessels;

(v) Bomber, fighter, reconnaissance and electronic warfare aircraft;

(vi) Strategic and tactical missiles including launching systems;

(vii) Guided munitions;

(viii) Military surveillance, command, control, and communication systems;

(ix) Military cargo vehicles and aircraft;

(x) Mines;

(xi) Torpedoes;

(xii) Fire control systems;

(xiii) Propulsion systems;

(xiv) Electronic warfare systems; and

(xv) Safety and survival systems.

(2) The term does not include—

(i) Commercial items;

(ii) Spares, repairs, or replenishment parts; or

(iii) Related support equipment (e.g., ground-handling equipment, training devices and accessories, ammunition), unless an effective warranty would require inclusion of such items.

246.770–2 Policy.

(a) Under 10 U.S.C. 2403, departments and agencies may not contract for the production of a weapon system with a unit weapon system cost of more than $100,000 or an estimated total procurement cost in excess of $10 million unless—

(1) Each contractor for the weapon system provides the Government written warranties that—

(i) The weapon system conforms to the design and manufacturing requirements in the contract (or any modifications to that contract),

(ii) The weapon system is free from all defects in materials and workmanship at the time of acceptance or delivery as specified in the contract; and

(iii) The weapon system, if manufactured in mature full-scale production, conforms to the essential performance requirements of the contract (or any modification to that contract); and

(2) The contract terms provide that, in the event the weapon system fails to meet the terms of the above warranties, the contracting officer may—

(i) Require the contractor to promptly take necessary corrective action (e.g., repair, replace, and/or redesign) at no additional cost to the Government;

(ii) Require the contractor to pay costs reasonably incurred by the Government in taking necessary corrective action, or

(iii) Equitably reduce the contract price; or

(3) A waiver is granted under 246.770–8.

(b) Contracting officers and program managers shall consider the following when developing and negotiating weapon system warranty provisions:

(1) Warranties may not be appropriate in all situations, and a waiver should be sought if a warranty would not be cost-effective or would otherwise be inconsistent with the national defense. In drafting warranty provisions, the drafters must ensure they understand the planned operational, maintenance, and supply concepts of the weapon system to be fielded, and must structure a warranty that matches those concepts. A warranty plan should be prepared in consonance with development of the warranty provision early in the weapon system's life cycle. The plan should contain program warranty strategy, terms of the warranty, administration and enforcement

requirements, and should be coordinated with the user and support activities.

(2) A cost/benefit analysis must be accomplished in support of each warranty (see 246.770–7). The cost/benefit analysis compares all costs associated with the warranty to the expected benefits. An estimate shall be made of the likelihood of defects and the estimated cost of correcting such defects. Also, if substantive changes are required to the planned operational, maintenance, or supply concepts, any increased costs should be weighed against the expected benefits in deciding whether a warranty is cost-effective.

(3) The Warranty Guidebook prepared by the Defense Systems Management College, Fort Belvoir, VA 22060–5426, is a valuable reference that can assist in the development, negotiation, and administration of an effective weapon system warranty.

(c) Contracting officers may require warranties that provide greater coverage and remedies than specified in paragraph (a) of this subsection.

(d) When the contract includes an essential performance requirement warranty, the warranty must identify redesign as a remedy available to the Government.

(1) The period during which redesign must be available as a remedy shall not end before operational use, operational testing, or a combination of operational use and operational testing has demonstrated that the warranted item's design has satisfied the essential performance requirements.

(2) When essential performance requirements are warranted in contracts with alternate source contractors, do not include redesign as a remedy available to the Government under those contracts until the alternate source has manufactured the first ten percent of the eventual total production quantity anticipated to be acquired from that contractor (see 246.770–5).

[56 FR 36460, July 31, 1991, as amended at 59 FR 7749, Feb. 29, 1996]

246.770–3 Tailoring warranty terms and conditions.

(a) Since the objectives and circumstances vary considerably among weapon system acquisition programs, contracting officers must tailor the required warranties on a case-by-case basis. The purpose of tailoring is to get a cost-effective warranty in light of the technical risk, or other program uncertainties, while ensuring that the Government still acquires the basic warranties described in 246.770–2. Tailoring shall not be used as a substitute for acquiring a warranty waiver.

(1) Tailoring may affect remedies, exclusions, limitations, and duration provided such are consistent with the specific requirements of this section (see also FAR 46.706).

(2) Clearly relate the duration of any warranty to the contract requirements and allow sufficient time to demonstrate achievement of the requirements after acceptance.

(3) Tailor the terms of the warranty, if appropriate, to exclude certain defects for specified supplies (exclusions) or to limit the contractor's liability under the terms of the warranty (limitations).

(4) Structure broader and more comprehensive warranties when advantageous or narrow the scope when appropriate. For example, it may be inappropriate to require warranty of all essential performance requirements for a contractor that did not design the system.

(b) DoD policy is to exclude any terms that cover contractor liability for loss, damage, or injury to third parties from warranty clauses.

(c) Ensure acquisition of subsystems and components in a manner which does not affect the validity of the weapon system warranty.

246.770–4 Warranties on Government-furnished property.

Contracting officers shall not require contractors to provide the warranties specified in 246.770–2 on any property furnished the contractor by the Government, except for—

(a) Defects in installation;

(b) Installation or modification in such a manner that invalidates a warranty provided by the manufacturer of the property; or

(c) Modifications made to the property by the contractor.

246.770–5 Exemption for alternate source contractor(s).

Agency heads may exempt alternate source contractor(s) from the essential performance warranty requirements of 246.770–2(a)(1)(iii) until that contractor manufactures the first ten percent of its anticipated total production quantity.

246.770–6 Applicability to foreign military sales (FMS).

(a) The warranty requirements of 246.770–2 are not mandatory for FMS production contracts. DoD policy is to obtain the same warranties on conformance to design and manufacturing requirements and against defects in material and workmanship as it gets for U.S. supplies.

(b) DoD normally will not obtain essential performance warranties for FMS purchasers. However, where contracting officer cannot separately identify the cost for the warranty of essential performance requirements, the foreign purchaser shall be given the same warranty that the United States gets.

(c) If an FMS purchaser expressly requests a performance warranty in the letter of acceptance, the Government will exert its best efforts to obtain the same warranty obtained for U.S. equipment. Or, if specifically requested by the FMS purchaser, obtain a unique warranty.

(d) The costs for warranties for FMS purchasers may be different from the costs for such warranties for the Government due to factors such as overseas transportation and any tailoring to reflect the unique aspects of the FMS purchaser.

(e) Ensure that FMS purchasers bear all of the acquisition and administrative costs of any warranties.

246.770–7 Cost-benefit analysis.

(a) In assessing the cost effectiveness of a proposed warranty, perform an analysis which considers both the quantitative and qualitative costs and benefits of the warranty. Consider—

(1) Costs of warranty acquisition, administration, enforcement, and user costs, and any costs resulting from limitations imposed by the warranty provisions;

(2) Costs incurred during development specifically for the purpose of reducing production warranty risks;

(3) Logistical and operational benefits as a result of the warranty as well as the impact of the additional contractor motivation provided by the warranty.

(b) Where possible, make a comparison with the costs of obtaining and enforcing similar warranties on similar systems.

(c) Document the analysis in the contract file. If the warranty is not cost effective, initiate a waiver request under 246.770–8.

246.770–8 Waiver and notification procedures.

(a) The Secretary of Defense has delegated waiver authority within the limits specified in 10 U.S.C. 2403. The waiving authority for the defense agencies is the Under Secretary of Defense (Acquisition and Technology). Submit defense agency waiver requests to the Director, Defense Procurement, for processing. The waiving authority for the military departments is the Secretary of the department with authority to redelegate no lower than an Assistant Secretary. The waiving authority may waive one or more of the weapon system warranties required by 246.770–2 if—

(1) The waiver is in the interests of national defense; or

(2) The warranty would not be cost effective.

(b) Waiving authorities must make the following notifications or reports to the Senate and House Committees on Armed Services and Appropriations for all waivers—

(1) *Major weapon systems.* For a weapon system that is a major Defense acquisition program for the purpose of 10 U.S.C. 2432, the waiving official must notify the Committees in writing of an intention to waive one or more of the required warranties. Include an explanation of the reasons for the waiver in the notice. Ordinarily provide the notice 30 days before granting a waiver.

(2) *Weapon systems not in mature full-scale production.* Although a waiver is not required, if a production contract for a major weapon system not yet in mature full-scale production will not

include a warranty on essential performance requirements, the waiving officials must comply with the notice requirements for major weapon systems.

(c) Departments and agencies shall issue procedures for processing waivers and notifications to Congress.

(1) Requests for waiver shall include—

(i) A brief description of the weapon system and its stage of production, e.g., the number of units delivered and anticipated to be delivered during the life of the program;

(ii) Identification of the specific warranty or warranties required by 246.770–2(a)(1) for which the waiver is requested;

(iii) The duration of the waiver if it is to go beyond the contract;

(iv) The rationale for the waiver (if the waiver request is based on cost effectiveness, include the results of the cost-benefit analysis);

(v) A description of the warranties or other techniques used to ensure acceptable field performance of the weapon system, e.g., warranties, commercial or other guarantees obtained on individual components; and

(vi) Exercise date of the warranty option, if applicable.

(2) Notifications shall include—

(i) A brief description of the weapon system and its stage of production; and

(ii) Rationale for not obtaining a warranty.

(3) Keep a written record of each waiver granted and notification and report made, together with supporting documentation such as a cost-benefit analysis, for use in answering inquiries.

[56 FR 36460, July 31, 1991, as amended at 61 FR 7750, Feb. 29, 1996]

PART 247—TRANSPORTATION

Sec.

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AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36466, July 31, 1991, unless otherwise noted.

Subpart 247.1—General

247.103 Transportation Documentation and Audit Regulation (TDA).

(b)(2) Appendix J of the Defense Traffic Management Regulation lists the carriers and carrier associations that have agreed to provide transportation

under commercial forms and procedures within CONUS.

247.104 Government rate tenders under section 10721 of the Interstate Commerce Act.

247.104–3 Cost-reimbursement contracts.

(a) Section 10721 rates do not apply to foreign military sale (FMS) shipments.

(i) On shipments of stock fund items from a contractor to a depot, when some of the items in a specific transportation unit are clearly for FMS—

(A) Section 10721 rates do not apply to FMS items shipped on a separate bill of lading; and

(B) Section 10721 rates do apply to the non-FMS items.

247.104–5 Citation of Government rate tenders.

(a) See section XI, chapter 32 of the Defense Traffic Management Regulation for instructions on converting commercial bills of lading to Government bills of lading within CONUS.

247.105 Transportation assistance.

(a)(i) Transportation assistance includes all transportation factors, such as—

(A) Freight rates (for evaluation of bids or routing purposes);

(B) Other transportation costs;

(C) Transit agreements;

(D) Time in transit;

(E) Port handling charges; and

(F) Port capabilities.

(ii) Within CONUS, the Military Traffic Management Command (MTMC), through its eastern and western area commands, is responsible for the performance of traffic management functions. These functions include the direction, control, and supervision of all functions incident to the acquisition and use of commercial freight and passenger transportation services. See chapters 1 and 2 of the Defense Traffic Management Regulation for the locations and geographical areas of jurisdiction of each area headquarters.

(iii) For assistance with international shipments—

(A) Originating in CONUS, request assistance from the appropriate military activity; i.e., the Air Mobility Command (AMC), Military Sealift Command (MSC), MTMC, or the military service sponsoring the cargo;

(B) For all modes of transportation originating overseas, request assistance from the overseas Theater Commander assigned responsibility for common-user, military-operated land transportation;

(C) Of bulk petroleum via ocean tanker, request assistance, rates, or other costs from the MSC;

(D) Of supplies between points outside the CONUS, including Alaska and Hawaii, request assistance, rates, or other costs from the military service sponsoring the cargo. Direct the requests to:

Army: Deputy Chief of Staff for Logistics, Department of the Army, Attn: DALO-TSP, Washington, DC 20310–0570

Navy: Naval Supply Systems Command, Code 051, Washington, DC 20390–5000

Air Force

Applicable overseas Air Force Command, HQ PACAF/LGT, 25 East Street, suite I–326, Hickam AFB, HI 96853–5427.

HQ USAFE/LGT, Unit 3050, Box 105, APO AE 09049–0105.

HQ AFSPACECOM/LGT, 150 Vandenberg Street, suite 1105, Peterson AFB, CO 80914–4435.

Marine Corps: Director, Transportation Division, HQ, U.S. Marine Corps, COS, Washington, DC 20380

(E) When requesting rates and related costs for the evaluation of bids or proposals, include the bid opening or proposal due date and the expected date of initial shipment, if established.

[56 FR 36466, July 31, 1991, as amended at 59 FR 27674, May 27, 1994]

Subpart 247.2—Contracts for Transportation or for Transportation-Related Services

247.270 Stevedoring contracts.

247.270–1 Scope of section.

This section contains procedures peculiar to stevedoring. Other portions of the FAR and DFARS dealing with service contracting also apply to stevedoring contracts.

247.270–2 Definitions.

Commodity rate is—

(1) The price quoted for handling a ton (weight or measurement) of a specified commodity.

(2) Computed by dividing the hourly stevedoring gang cost by the estimated number of tons of the specified commodity which can be handled in 1 hour.

Gang cost is—

(1) The total hourly wages paid to the workers in the gang, in accordance with the collective bargaining agreement between the maritime industry and the unions at a specific port; and

(2) Payments for workmen's compensation, social security taxes, unemployment insurance, taxes, liability and property damage insurance, general and administrative expenses, and profit.

Stevedoring is the—

(1) Loading of cargo from an agreed point of rest on a pier or lighter and its storage aboard a vessel; or

(2) Breaking out and discharging of cargo from any space in the vessel to an agreed point of rest dockside or in a lighter.

247.270–3 Type of contract.

Normally, use an indefinite-quantity type contract.

247.270–4 Technical provisions.

(a) Because conditions vary at different ports, and sometimes within the same port, it is not practical to develop standard technical provisions covering all phases of stevedoring operations.

(b) When including car loading and unloading or other dock and terminal work under a stevedoring contract, include these requirements as separate items of work.

§ 247.270–5 Evaluation of bids and proposals.

At a minimum, require that offers include—

(a) Tonnage or commodity rates which apply to the bulk of the cargo worked under normal conditions;

(b) Labor-hour rates which apply to services not covered by commodity rates, or to work performed under hardship conditions; and

(c) Cost of equipment rental.

[59 FR 50852, Oct. 6, 1994]

§ 247.270–6 Award of contract.

Make the award to the contractor submitting the offer most advantageous to the Government, considering cost or price and other factors specified elsewhere in the solicitation. Evaluation will include, but is not limited to—

(a) Total estimated cost of tonnage to be moved at commodity rates;

(b) Estimated cost at labor-hour rates; and

(c) Cost of equipment rental.

[59 FR 50852, Oct. 6, 1994]

247.270–7 Contract clauses.

Use the following clauses in solicitations and contracts for stevedoring services as indicated—

(a) 252.247–7000, Hardship Conditions, as appropriate;

(b) 252.247–7001, Price Adjustment, when using sealed bidding;

(c) 252.247–7002, Revision of Prices, when using negotiation;

(d) 252.247–7003, Termination, when it is desirable to permit either party to terminate the contract;

(e) 252.247–7004, Indefinite Quantities-Fixed Charges, when the contract will provide for the payment of fixed charges;

(f) 252.247–7005, Indefinite Quantities-No Fixed Charges, when the contract will not provide for the payment of fixed charges;

(g) 252.247–7006, Removal of Contractor's Employees; and

(h) 252.247–7007, Liability and Insurance.

247.271 Contracts for the preparation of personal property for shipment or storage.

247.271–1 Scope of section.

This section contains procedures peculiar to the preparation of personal property for shipment or storage, and for the performance of intra-area or intra-city movement. Other portions of the FAR and DFARS dealing with service contracting also apply to these services.

247.271–2 Policy.

(a) *Annual contracts.* Normally—

(1) Use requirements contracts awarded through sealed bidding to acquire services for the—

(i) Preparation of personal property for shipment or storage; and

(ii) Performance of intra-area movement.

(2) Award contracts on a calendar year basis.

(3) Provide for option years.

(4) Award contracts, or exercise option years, before November 1 of each year, if possible.

(b) *Areas of performance.* Define clearly in the solicitation each area of performance.

(1) Establish one or more areas; however, hold the number to a minimum consistent with local conditions.

(2) Each schedule may provide for the same or different areas of performance. Determine the areas as follows—

(i) Use political boundaries, streets, or any other features as lines of demarcation. Consider such matters as—

(A) Total volume;

(B) Size of overall area; and

(C) The need to service isolated areas of high population density.

(ii) Specifically identify frequently used terminals, and consider them as being included in each area of performance described in the solicitation.

(c) *Maximum requirements-minimum capability.* The contracting officer shall—

(1) Establish realistic quantities on the Estimated Quantities Report in DoD 4500.34–R, Personal Property Traffic Management Regulation;

(2) Ensure that the Government's minimum acceptable daily capability—

(i) Will at least equal the maximum authorized individual weight allowance as prescribed by the Joint Federal Travel Regulations; and

(ii) Will not preclude bidding by small business firms.

247.271–3 Procedures.

(a) *CONUS military activities assigned multi-service personal property areas of responsibility.* (1) When two or more military installations or activities have personal property responsibilities in a given area, one activity shall contract for the estimated requirements of all activities in the area. The installation commanders concerned shall designate the activity by mutual agreement.

(2) The Commander, MTMC, shall designate the contracting activity when local commanders are unable to reach agreement.

(b) *Additional services and excess requirements.* (1) Excess requirements are those services which exceed contractor capabilities available under contracts. Use small purchase procedures to satisfy excess requirements.

(2) Additional services are those not specified in the bid items.

(i) Additional services may include—

(A) Hoisting or lowering of articles;

(B) Waiting time;

(C) Special packaging; and

(D) Stuffing or unstuffing of sea van containers.

(ii) Consider contracting for local moves that do not require drayage by using hourly rate or constructive weight methods. The rate will include those services necessary for completion of the movement, including—

(A) Packing and unpacking;

(B) Movement;

(C) Inventorying; and

(D) Removal of debris.

(iii) Each personal property shipping activity shall determine if local requirements exist for any additional services.

(iv) The contracting officer may obtain additional services by—

(A) Including them as items within the contract; provided, they are not used in the evaluation of bids (see 252.247–7008, Evaluation of Bids); or

(B) Using small purchase procedures.

(v) Either predetermine prices for additional services with the contractor, or negotiate them on a case-by-case basis.

(vi) The contracting officer must authorize the contractor to perform any additional services, other than attempted pick up or delivery, regardless of the contracting method.

(vii) To the maximum extent possible, identify additional services required that are incidental to an order before placing the order; or, when applicable, during the premove survey.

(c) *Contract distribution.* In addition to the distribution requirements of FAR subpart 4.2, furnish one copy of each contract as follows—

(1) CONUS personal property shipping activities shall send the copy to the Commander, Military Traffic Management Command, Attn: MTPP-CI, Room 408, 5611 Columbia Pike, Falls Church, VA 22041–5050.

(2) In the European and Pacific areas, personal property shipping activities shall send the copy to either the Property Directorate, MTMC Europe, or the MTMC Field Office-Pacific.

(3) Other overseas personal property shipping activities shall send the copy to the Commander, Military Traffic Management Command, Attn: MTPP-Q, 5611 Columbia Pike, Falls Church, VA 22041–5050.

247.271–4 Solicitation provisions, schedule formats, and contract clauses.

When acquiring services for the preparation of personal property for movement or storage, and for performance of intra-city or intra-area movement, use the following provisions, clauses, and schedules. Revise solicitation provisions and schedules, as appropriate, if using negotiation rather than sealed bidding. Overseas commands, except those in Alaska and Hawaii, may modify these clauses to conform to local practices, laws, and regulations.

(a) The provision at 252.247–7008, Evaluation of Bids. When adding ''additional services'' items to any schedule, use the basic clause with Alternate I.

(b) The provision at 252.247–7009, Award.

(c) In solicitations and resulting contracts, the schedules contained in DoD 4500.34–R, Personal Property Traffic Management Regulation, as provided by the installation personal property shipping office.

(1) When there is no requirement for an item or subitem in a schedule, indicate that item or subitem number, in its proper numerical sequence, and add the statement ''No Requirement.''

(2) Within Schedules I (Outbound) and II (Inbound), item numbers are reserved to permit inclusion of additional items as required by local conditions.

(3) Overseas activities, except those in Alaska and Hawaii, may modify the schedules when necessary to conform with local trade practices, laws, and regulations.

(4) All generic terminology, schedule, and item numbers in proper sequence shall follow those contained in the basic format.

(5) When it is in the Government's best interest to have both outbound and inbound services within a given area of performance furnished by the same contractor, modify the schedule format to combine both services in a single schedule. However, items shall follow the same sequential order as in the basic format.

(6) Process any modification of schedule format, other than those authorized in paragraphs (c) (1) through (5) of this subsection, as a request for deviation through MTMC area commands/field offices to HQ, MTMC.

(d) The clause at 252.247–7010, Scope of Contract.

(e) The clause at 252.247–7011, Period of Contract. When the period of performance is less than a calendar year, modify the clause to indicate the beginning and ending dates. However, the contract period shall not end later than December 31 of the year in which the contract is awarded.

(f) In addition to designating each ordering activity, as required by the clause at FAR 52.216–18, Ordering, identify by name or position title the individuals authorized to place orders for each activity. When provisions are made for placing oral orders in accordance with FAR 16.506(b), document the oral orders in accordance with departmental/agency instructions.

(g) The clause at 252.247–7012, Ordering Limitation.

(h) The clause at 252.247–7013, Contract Areas of Performance.

(i) The clause at 252.247–7014, Demurrage.

(j) When using the clause at FAR 52.216–21, Requirements, see 216.505(d) which prescribes use of Alternate I at 252.247–7015.

(k) The clause at 252.247–7016, Contractor Liability for Loss and Damage.

(l) The clause at 252.247–7017, Erroneous Shipments.

(m) The clause at 252.247–7018, Subcontracting.

(n) The clause at 252.247–7019, Drayage.

(o) The clause at 252.247–7020, Additional Services.

(p) The clauses at FAR 52.247–2, Permits, Authorities, or Franchises; FAR 52.247–8, Estimated Weights or Quantities Not Guaranteed; FAR 52.247–13, Accessorial Services—Moving Contracts; and FAR 52.247–17, Charges.

Subpart 247.3—Transportation in Supply Contracts

247.305 Solicitation provisions, contract clauses, and transportation factors.

247.305–10 Packing, marking, and consignment instructions.

(b) Consignment instructions shall include, as a minimum—

(i) The clear text and coded MILSTRIP data as follows—

(A) Consignee code and clear text identification of consignee and destination as published in—

(*1*) DoD 4000.25–6–M, Department of Defense Activity Address Directory (DoDAAD);

(*2*) DoD 4000.25–8–M, Military Assistance Program Address Directory (MAPAD);

(*3*) Commercial and Government Entity (CAGE) Handbook H4/H8; or

(*4*) Transportation Control and Movement Document.

Reporting procedures and instructions shall comply with DoD Regulation 4500.32–R, MILSTAMP.

(B) Project code, when applicable;

(C) Transportation priority;

(D) Required delivery date; and

(E) Coded MILSTRIP document number, demand/suffix code, a supplementary address and signal code.

(ii) Non-MILSTRIP shipments shall include data similar to paragraph (b)(i)(A) through (D) of this subsection and the applicable portion of paragraph (b)(i)(E) with the notation ''Non-MILSTRIP.''

(iii) In amended shipping instructions include, in addition to the data requirements of paragraphs (b)(i)(A) through (E) of this subsection, the following, when appropriate—

(A) Name of the activity originally designated, from which the stated quantities are to be deducted; and

(B) Any other features of the amended instructions not contained in the basic contract.

(iv) If a contract is assigned for any contract administration function listed in FAR subpart 42.3, to any office listed in DoD 4105.4, DoD Directory of Contract Administration Services Components, then include in instructions the—

(A) Modification serial number; and, if a new line item is created by the issuance of shipping instructions;

(B) New line item number; and

(C) Existing line item number, if affected.

(v) For petroleum, oil and lubricant products, instructions for diversions need not include the modification serial number and new line item number, when the instructions are—

(A) For diversions overseas to new destinations;

(B) Issued by an office other than that issuing the contract or delivery order; and

(C) Issued by telephone, teletype, or telegram.

247.305–70 Returnable containers other than cylinders.

Use the clause at 252.247–7021, Returnable Containers Other Than Cylinders, in solicitations and contracts for supplies involving contractor-furnished returnable reels, spools, drums, carboys, liquid petroleum gas containers, or other returnable containers if the contractor is to retain title to the containers.

[60 FR 29501, June 5, 1995]

247.370 Use of Standard Form 30 for consignment instructions.

When complete consignment instructions are not known initially, use the Standard Form 30, Amendment of Solicitation/Modification of Contract, to issue or amend consignment instructions, and when necessary, to confirm consignment instructions issued by telephone, teletype, or telegram.

(a) When using the SF 30 to confirm delivery instructions—

(1) Stamp or mark ''CONFIRMATION'' in block letters on the form, and specify in detail those instructions being confirmed.

(2) Do not change the instructions being confirmed.

(b) Process the confirming SF 30 as follows—

(1) For contracts assigned for any contract administration function listed in subpart 247.3 to any office listed in DoD 4105.4, DoD Directory of Contract Administration Services Components, within five working days;

(2) For diversions of petroleum, oil, and lubricant products overseas to new destinations, within 30 days of instructions being confirmed; and

(3) Other contracts—

(i) Telephone—within five working days; and

(ii) Teletype or telegraph—consolidate on a monthly basis.

247.371 DD Form 1384, Transportation Control and Movement Document.

Reporting procedures and instructions for this form will be in compliance with DoD Regulation 4500.32–R, MILSTAMP.

247.372 DD Form 1653, Transportation Data for Solicitations.

(a) The transportation specialist prepares the DD Form 1653 at the request of the contracting officer. The completed form will contain recommendations concerning f.o.b. terms best suited for a particular acquisition, and other suggested transportation provisions for inclusion in the solicitation.

(b) When appropriate, the DD Form 1653 will also include information on combined port handling and transportation charges for inclusion in the solicitation in connection with export shipments.

247.373 DD Form 1654, Evaluation of Transportation Cost Factors.

Contracting personnel may use the DD Form 1654 to furnish information to the transportation office for development of cost factors for use by the contracting officer in the evaluation of f.o.b. origin offers.

Subpart 247.5—Ocean Transportation by U.S.-Flag Vessels

247.570 Scope.

This subpart—

(a) Implements the Cargo Preference Act of 1904, 10 U.S.C. 2631, which applies to the ocean transportation of cargo owned by, or destined for use by, the DoD.

(b) Does not specifically implement the Cargo Preference Act of 1954, 46 U.S.C. 1241(b). The 1954 Act is applicable to the DoD, but DFARS coverage is not required because compliance with the 1904 Act historically has resulted in the DoD exceeding the 1954 Act's requirements.

(c) Is an approved class deviation from FAR subpart 47.5 in its entirety (but see 247.571(c)).

247.571 Policy.

(a) DoD contractors shall transport supplies, as defined in the clause at 252.247–7023, Transportation of Supplies by Sea, exclusively on U.S.-flag vessels unless—

(1) Those vessels are not available, and notices are given and approvals received in accordance with this subpart;

(2) The Secretary of the Navy determines that the freight charged is excessive or unreasonable; or

(3) The contracting officer finds that the charges to the Government are higher than charges to private persons for the transportation of like goods.

(b) Contracts shall provide for the use of Government-owned vessels when security classifications prohibit the use of other than Government-owned vessels.

(c)(1) Any vessel used under a time charter contract for the transportation of supplies shall have any reflagging or repair work, as defined in the clause at 252.247–7205, Reflagging or Repair Work, performed in the United States or its territories, if the reflagging or repair work is performed—

(i) On a vessel for which the contractor submitted an offer in response to the solicitation for the contract; and

(ii) Prior to acceptance of the vessel by the Government.

(2) The Secretary of Defense may waive this requirement if the Secretary determines that such waiver is critical to the national security of the United States.

(d) The Cargo Preference Act of 1904 does not apply to ocean transportation of—

(1) Products obtained for contributions to foreign assistance programs; or

(2) Products owned by agencies other than the DoD. In these cases, FAR subpart 47.5 applies.

[56 FR 36466, July 31, 1991, as amended at 59 FR 10580, Mar. 7, 1994; 60 FR 29501, June 5, 1995]

247.572 Procedures.

247.572–1 Ocean transportation incidental to a contract for supplies, services, or construction.

(a) This subsection applies when ocean transportation is not the purpose of the contract. However, effective May 1, 1996, this subsection does not apply to subcontracts for the acquisition of commercial items or commercial components (see 212.504(a)(xxii)).

(b) The contracting officer shall obtain assistance from the cognizant transportation activity (see 247.105), in developing—

(1) The Government estimate for transportation costs, irrespective of whether freight will be paid directly by the Government;

(2) Shipping instructions and delivery terms for inclusion in solicitations and contracts that may involve transportation of supplies by sea.

(c) The contracting officer shall ask each offeror whether it will transport supplies by sea if awarded the contract (see 247.573(a)). Even if the successful offeror responds that it does not anticipate sea transport of supplies, it may discover during contract performance that ocean transportation is required. In that event, the Act will apply to the contract, and it must—

(1) Notify the Government that it now intends to use ocean transportation;

(2) Use U.S.-flag vessels unless certain conditions exist (see 247.571(a)); and

(3) Comply with the other requirements of the clause at 252.247–7023, Transportation of Supplies by Sea.

(d) When the contracting officer is notified that the contractor or subcontractor considers that—

(1) No U.S.-flag vessels are available, the contracting officer shall request confirmation of the nonavailability from the Director, Office of Contracts and Business Management, Military Sealift Command (MSC).

(2) The freight charges to the Government, the contractor or any subcontractor, are higher than charges for transportation of like goods to private persons, the contracting officer may approve any request for a waiver of the requirement to ship on U.S.-flag vessels for a particular shipment.

(i) Prior to granting a waiver, the contracting officer shall request advice, oral or written, from the Commander, MSC.

(ii) In advising the contracting officer whether to grant the waiver, the Commander, MSC, shall consider, as appropriate, evidence from—

(A) Published tariffs;

(B) Industry publications;

(C) The Maritime Administration; and

(D) Any other available sources.

(3) The freight charged by U.S.-flag carriers is considered excessive or otherwise unreasonable, the contracting officer shall forward a report to the Commander, MSC, through the head of the contracting activity, and the Director, Office of Contracts and Business Management, MSC.

(i) The report shall be in determination and finding format, and—

(A) Take into consideration that the 1904 Act is, in part, a subsidy of the U.S.-flag commercial shipping industry that recognizes that lower prices may be available from foreign shippers;

(B) Consider, accordingly, not only excessive profits to the vessel owner, if ascertainable, but also excessive costs (i.e., costs beyond the economic penalty normally incurred by excluding foreign competition) resulting from the use of U.S.-flag vessels in extraordinarily inefficient circumstances;

(C) Include, as appropriate—

(*1*) An analysis of whether the cost is excessive, taking into account factors such as the differential between freight charges by the U.S.-flag carrier and an estimate of what foreign-flag carriers would charge based upon a price analysis;

(*2*) A comparison of U.S.-flag rates charged on comparable routes;

(*3*) Efficiency of operation regardless of rate differential (i.e., suitability of

the vessel for the required transportation in terms of cargo requirements/vessel capacity; the commercial reasonableness of vessel positioning required, etc.); and

(*4*) Any other relevant economic and financial considerations.

(D) Consider that the fact that it would be less expensive to use a foreign-flag vessel is not a sufficient basis, on its own, to determine that the freight rate proposed by the U.S.-flag carrier is excessive or otherwise unreasonable. However, such a differential may indicate a need for further review.

(ii) If the Commander, MSC, concurs with the contracting officer, the Commander will forward the report to the Secretary of the Navy, via ASN(RDA)(PP), for a determination as to whether the freight charges are excessive or otherwise unreasonable.

[56 FR 36466, July 31, 1991, as amended at 60 FR 61599, Nov. 30, 1995]

247.572–2 Direct purchase of ocean transportation services.

(a) This subsection applies when ocean transportation is the principal purpose of the contract, including—

(1) Time charters;

(2) Voyage charters;

(3) Contracts of affreightment;

(4) Dedicated contractor contracts of affreightment;

(5) Ocean bills of lading; and

(6) Subcontracts under Government contracts or agreements for ocean transportation services.

(b) Coordinate these acquisitions, as appropriate, with the MSC in accordance with DoDD 5160.10, Single Manager Assignment for Ocean Transportation.

(c) The Commander, MSC, is authorized to make any determination as to the availability of U.S.-flag vessels, in order to ensure the proper utilization of Government and private U.S. vessels.

(d) All solicitations for ocean transportation services for supplies owned by the military departments shall provide a preference for U.S.-flag vessels as an evaluation factor.

(e) The contracting officer shall not award a contract of the type described in paragraph (a) of this subsection for a foreign-flag vessel unless—

(1) The contracting officer determines that no U.S.-flag vessels are available, and obtains approval of the Commander, MSC; or

(2) The contracting officer determines that the freight charges proposed by U.S.-flag vessels to the Government are higher than charges to private persons for transportation of like goods, and obtains the approval of the Commander; MSC; or

(3) The Secretary of the Navy determines (see paragraph (f) of this subsection) that the freight charges for U.S.-flag vessels are excessive or otherwise unreasonable.

(f) When the contracting officer concludes, based solely on economic considerations, that the charge offered for a U.S.-flag vessel is excessive or otherwise unreasonable, the contracting officer will send a report through the head of the contracting activity to the Commander, MSC.

(1) The fact that it would be less expensive to use a foreign-flag vessel is an insufficient basis, on its own, to determine that the freight rate proposed by the U.S.-flag carrier is excessive or otherwise unreasonable. However, such a differential may indicate a need for further review.

(2) The Commander, MSC, will forward the report, if in agreement with the contracting officer, to the Secretary of the Navy for a determination.

(3) The report shall be in determination and finding format; take into consideration the factors in 247.572–1(d)(3); and include, as appropriate—

(i) An analysis of the carrier's cost in accordance with FAR subpart 15.8, or profit in accordance with DFARS subpart 215.9. The costs or profit should not be so high as to make it unreasonable to apply the preference for U.S.-flag vessels;

(ii) A description of efforts taken pursuant to FAR 15.803(d), to negotiate a reasonable price. For the purpose of FAR 15.803(d), this report is the referral to higher authority; and

(iii) An analysis of whether the cost is excessive (i.e., cost beyond the economic penalty normally incurred by excluding foreign competition), taking into consideration such factors as—

(A) The differential between freight charges by the U.S.-flag carrier and an

estimate of what foreign-flag carriers would charge based upon a price analysis;

(B) A comparison of rates charged by other U.S.-flag carriers on comparable routes;

(C) Efficiency of operation regardless of rate differential (i.e., suitability of the vessel capacity/cargo requirements; the commercial reasonableness of the vessel positioning required, etc.); and

(D) Any other relevant economic and financial considerations affecting the Government.

[56 FR 36466, July 31, 1991, as amended at 60 FR 61599, Nov. 30, 1995]

247.573 Solicitation provision and contract clauses.

(a) Use the provision at 252.247–7022, Representation of Extent of Transportation by Sea, in full text, in all solicitations except—

(1) Those for direct purchase of ocean transportation services; or

(2) Those with an anticipated value below the small purchase limitation at FAR 13.000.

(b) Use the clause at 252.247–7023, Transportation of Supplies by Sea, in all solicitations and resultant contracts, in full text, except—

(1) Those for direct purchase of ocean transportation services; or

(2) Those with an anticipated value below the small purchase limitation at FAR 13.000.

(c) Use the clause at 252.247–7024, Notification of Transportation of Supplies by Sea, in full text, in all contracts for which the offeror made a negative response to the inquiry in the provision at 252.247–7022, Representation of Extent of Transportation by Sea.

(d) Use the clause at 252.247–7025, Reflagging or Repair Work, in all time charter solicitations and contracts for the use of a vessel for the transportation of supplies, unless a waiver has been granted in accordance with 247.571(c).

[56 FR 36466, July 31, 1991, as amended at 59 FR 10580, Mar. 7, 1994; 60 FR 29501, June 5, 1995]

PART 248—VALUE ENGINEERING

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

Subpart 248.2—Contract Clauses

248.270 Supplemental clause.

When one of the clauses prescribed by FAR subpart 48.2 is used and the contracting officer wants value engineering change proposals submitted in the format prescribed by MIL–STD–973, use the clause at 252.248–7000, Preparation of Value Engineering Change Proposals.

[56 FR 36471, July 31, 1991, as amended at 59 FR 27674, May 27, 1994]

PART 249—TERMINATION OF CONTRACTS

Sec.

Subpart 249.1—General Principles

249.105 Duties of termination contracting officer after issuance of notice of termination.
249.105–1 Termination status report.
249.105–2 Release of excess funds.
249.108 Settlement of subcontract settlement proposals.
249.108–4 Authorization for subcontract settlements without approval or ratification.
249.109 Settlement agreements.
249.109–7 Settlement by determination.
249.110 Negotiation memorandum.

Subpart 249.5—Contract Termination Clauses

249.501 General.
249.501–70 Special termination costs.

Subpart 249.70—Special Termination Requirements

249.7000 Terminated contracts with Canadian Commercial Corporation.
249.7001 Congressional notification on significant contract terminations.
249.7002 [Reserved]
249.7003 Notification of anticipated contract terminations or reductions.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36471, July 31, 1991, unless otherwise noted.

Subpart 249.1—General Principles.

249.105 Duties of termination contracting officer after issuance of notice of termination.

249.105–1 Termination status report.

When the contract administration office receives a termination notice, it will under Report Control Symbol DD–ACQ (AR) 1411—

(i) Prepare a DD Form 1598, Contract Termination Status Report;

(ii) Within 30 days, send one copy to the purchasing office and one copy to the headquarters office to which the contract administration office is directly responsible;

(iii) Continue reporting semiannually to cover the 6 month periods ending March and September. The semiannual reports must be submitted within 30 days after the end of the reporting period; and

(iv) Submit a final report within 30 days after closing the termination case.

[56 FR 36471, July 31, 1991, as amended at 59 FR 27674, May 27, 1994]

249.105–2 Release of excess funds.

The DD Form 1598, Contract Termination Status Report, may be used to recommend the release of excess funds. The final recommendation to release excess funds should include the appropriations and allocated amounts.

249.108 Settlement of subcontract settlement proposals.

249.108–4 Authorization for subcontract settlements without approval or ratification.

(a)(1)(ii) Industrial plant equipment included in the inventory—

(*1*) Is subject to the screening requirements in FAR 45.608.

(*2*) Shall not be disposed of until screening is completed when the cost of that equipment is used in determining the amount of the claim.

249.109 Settlement agreements.

249.109–7 Settlement by determination.

(a)(i) Use a Standard Form 30 (SF 30), Amendment of Solicitation/Modification of Contract, to settle a convenience termination by determination—

(A) When the contractor has lost its right of appeal because it failed to submit a timely settlement proposal; and

(B) To confirm the determination when the contractor does not appeal the termination contracting officer's decision.

(ii) The effective date of the SF 30 shall be the same as the date of the letter of determination. Do not assign a supplementary procurement instrument number to the letter of determination. Send a copy of the SF 30 to the contractor by certified mail return receipt requested.

249.110 Negotiation memorandum.

(a)(i) *Fixed price contracts.* Use the format in Table 49–1, Settlement Memorandum-Fixed Price Contracts, for the termination contracting officer's settlement memorandum for fixed price contracts terminated for the convenience of the Government. Encourage contractors and subcontractors to use this format, appropriately modified, for subcontract settlements submitted for review and approval.

(ii) *Cost-reimbursement contracts.* Use Part I of the format in Table 49–1 and Part II of the format in Table 49–2, Settlement Memorandum for Cost-Reimbursement Contracts, for the termination contracting officer's settlement memorandum for cost-reimbursement contracts:

TABLE 49–1—SETTLEMENT MEMORANDUM-FIXED PRICE CONTRACTS

Part I—General Information

1. Identification. (Identify memorandum as to its purpose and content.)
   a. Name and address of the contractor. Comment on any pertinent affiliation between prime and subcontractors relative to the overall settlement.
   b. Names and titles of both contractor and Government personnel who participated in the negotiation.
2. Description of terminated contract.
   a. Date of contract and contract number.
   b. Type of contract (e.g., fixed price, fixed price incentive).
   c. General description of contract items.
   d. Total contract price.
   e. Furnish reference to the contract termination clauses (cite FAR/DFARS designation or other special provisions).
3. Termination notice.
   a. Reference termination notice and state effective date of termination.
   b. Scope and nature of termination (complete or partial), items terminated, unit price and total price of items terminated.
   c. State whether termination notice was amended, and explain any amendment.
   d. State whether contractor stopped work on effective termination date. If not, furnish details.
   e. State whether the contractor promptly terminated subcontracts.
   f. Statement as to the diversion of common items and return of goods to suppliers, if any.
   g. Furnish information as to contract performance and timeliness of deliveries by the contractor.
4. Contractor's settlement proposal.
   a. Date and amount. Indicate date and location where claim was filed. State gross amount of claim. (If interim settlement proposals were filed, furnished information for each claim.)
   b. Basis of claim. State whether claim was filed on inventory, total cost or other basis. Explain rationale for approval when claim is filed on other than inventory basis.
   c. Examination of proposal. State type of reviews made and by whom (audit, engineering, legal, or other).

Part II—Summary of Contractor's Claim and Negotiated Settlement

Prepare a summary substantially as follows:

Item claimed	Contractor's proposal	Dollars accepted	Costs questioned	Unresolved items	TCO negotiated amount
1. Contractor's costs as set forth on settlement proposal. Metals, raw materials, etc.. Total.					
2. Profit.					
3. Settlement expenses.					
4. Total.					
5. Settlement with subs.					
6. Acceptable finished product.					
7. Gross Total.					
8. Disposal and other credits.					
9. Net settlement.					
10. Partial, progress & advance payments.					
11. Net payments requested.					

Part III—Discussion of Settlement

1. Contractor's cost.
   a. If the settlement was negotiated on the basis of individual items, specify the factors and consideration for each item.
   b. In the case of a lump sum settlement, comment on the general basis for and major factors concerning each element of cost and profit included.
   c. Comment on any important adjustments made to costs claimed or any significant amounts in relation to the total claim.
   d. If a partial termination is involved, state whether the contractor has requested an equitable adjustment in the price of the continued portion of the contract.
   e. Comment on any unadjusted contractual changes which are included in the settlement.
   f. Comment on whether or not a loss would have been incurred and explain adjustment for loss, if any.
   g. Furnish other information believed helpful to any reviewing authority in understanding the recommended settlement.
2. Profit. Explain the basis and factors considered in arriving at a fair profit.
3. Settlement expenses. Comment on and summarize those expenses not included in the audit review.
4. Subcontractor's settlements. Include the number of no costs settlements, settlements concluded by the contractor under delegation of authority and those approved by the termination contracting officer, as well as the net amount of each.
5. Partial payments. Furnish the total amount of partial payments, if any.
6. Progress or advance payments. Furnish the total of unliquidated amounts, if any.
7. Claims of the Government against the contractor included in settlement agreement reservations. List all outstanding claims, if any, which the Government has against the contractor in connection with the terminated contract or terminated portion of the contract.
8. Assignments. List any assignments, giving name and address of assignee.
9. Disposal credits. Furnish information as to applicable disposal credits and give dollar amounts of all disposal credits.
10. Plant clearance. State whether plant clearance action has been completed and all inventory sold, retained, or otherwise properly disposed of in accordance with applicable plant clearance regulations. Comment on any unusual matters pertaining to plant clearances. Attach consolidated closing plant clearance report.
11. Government property. State whether all Government property has been accounted for.
12. Special tooling. If involved, furnish comment on disposition.
13. Summary of settlement. Summarize the settlement in tabular form substantially as follows:

Tabular Summary for Complete or Partial Termination

	Amount claimed	Amount allowed
Prime contractors charges (before disposal credits).		
Plus: Subcontractor charges (after disposal credits).		
Gross settlement:		
Less: disposal credits—Prime.		
Net settlement—Less:		
Prior payment credits (this settlement).		
Previous partial settlements.		
Other credits or deductions.		
Net payment:		
Total contract price (complete termination).		
Contract Price of Items Terminated (for partial termination)—Less:		
Total payments to date.		
Net payment from this settlement.		
Fund reserved for reservations.		
Reduction in contract price.		

14. Exclusions. Describe any proposed reservation of rights to the Government or to the contractor.
15. Include statement that the settlement is fair and reasonable for the Government and the contractor. The contracting officer shall sign and date the memorandum.

(End of memorandum)

TABLE 49–2—SETTLEMENT MEMORANDUM FOR COST-REIMBURSEMENT CONTRACTS

Part II—Summary of Settlement

1. Summary. Summarize the proposed settlement in tabular form substantially as shown in Tables 49–3 and 49–4. Partial settlements may be summarized on Table 49–4.
2. Comments. Explain tabular summaries.
   a. Summary of final settlement (see Table 49–3).
      (1) Explain why the auditor's final report was not available for consideration, if applicable.
      (2) Explain how the fixed fee was adjusted. Identify basis used such as percentage of completion. Include a description of factors considered and how they were considered. Include any tabular summaries and breakdowns deemed helpful to an understanding of the process. Factors which may be given consideration are outlined in FAR 49.305.
      (3) Briefly identify matters included in liability for property and other charges against the contractor arising from the contract.
      (4) Identify reservations included in the settlement that are other than standard reservations required by regulations and which are concerned with pending claims and refunds.
      (5) Explain substantial or otherwise important adjustments made in cost figures submitted by the contractor in arriving at the proposed settlement.
      (6) If unreimbursed costs were settled on a lump sum basis, explain the general basis for and the major factors considered in arriving at this settlement.
      (7) Comment on any unusual items of cost included in the claim and on any phase of cost allocation requiring particular attention and not covered above.
      (8) If auditor's recommendations for nonacceptance were not followed, explain briefly the main reasons why such recommendations were not followed.
      (9) On items recommended for further consideration by the auditor, explain, in general, the basis for the action taken.
      (10) If any cost previously disallowed by a contracting officer is included in the proposed settlement, identify and explain the reason for inclusion of such costs.
      (11) Show number and amounts of settlements with subcontractors.
      (12) Use the following summary where settlement includes costs and fixed fee in a complete termination:

Gross settlement		$_____
Less: Disposal credits		_____
Net settlement		_____
Less: Prior payments	_____	
Other credits or deductions	_____	
Total		_____
Net payment		$_____
Total contract estimated cost plus fixed fee		_____
Less: Net settlement	_____	
Estimated reserve for exclusions	_____	
Final contract price:		
(Consisting of $_____ for reimbursement of costs and $_____ for adjusted fixed fee)	_____	_____
Reduction in contract price (credit)		_____

      (13) Plant clearance. Indicate dollar value of termination inventory and state whether plant clearance has been completed. Attach consolidated plant clearance report (SF 1424, Inventory Disposal Report).
      (14) Government property. State whether all Government property has been accounted for.
      (15) Include a statement that the settlement is fair and reasonable to the Government and the contractor. The contracting officer shall sign and date the memorandum.

(End of memorandum)

TABLE 49–3—SUMMARY OF SETTLEMENT

		Amount claimed	Amount allowed
1. Previous reimbursed costs—Prime and Subs		$	$
2. Previous unreimbursed costs		_____	_____
3. Total cost settlement		$	$
4. Previous fees paid—Prime		$	$
5. Previous fees unpaid—Prime		_____	_____
6. Total fee settlement		$	$
7. Gross settlement		_____	_____
		$_____	$_____

TABLE 49–3—SUMMARY OF SETTLEMENT—Continued

		Amount claimed	Amount allowed
		_____	_____
Less: Deductions not reflected in Items 1–7.			
a. Disposal credits	$_____		
b. Other charges against contractor arising from contract	$_____		
8. Net settlement			$
Less: Prior payment credits			_____
9. Net payment			$
10. Recapitulation of previous settlements (insert number of previous partial settlements effected on account of this particular termination):			
Aggregate gross amount of previous settlements			$_____
Aggregate net amount of previous partial settlements			$_____
Aggregate net payment provided in previous partial settlements			$_____
Aggregate amount allowed for prime contractor acquired property taken over by the Government in connection with previous partial settlements.			$_____

TABLE 49–4—UNREIMBURSED COSTS SUBMITTED ON SF 1437*

Costs	Amounts claimed by contractor's proposal	Auditor's recommendation		TCO's computation
		Cost questioned	Unresolved items	
1. Direct material.				
2. Direct labor.				
3. Indirect factory expense.				
4. Dies, jigs, fixtures and special tools.				
5. Other costs.				
6. General and administrative expenses.				
7. Fee.				
8. Settlement expense.				
9. Settlement with subs.				
10. Total costs (Items 1–9).				

*Expand the format to include recommendations of technical personnel as required.

[56 FR 36471, July 31, 1991, as amended at 62 FR 34128, June 24, 1997]

Subpart 249.5—Contract Termination Clauses

249.501 General.

249.501–70 Special termination costs.

(a) The clause at 252.249–7000, Special Termination Costs, may be used in an incrementally funded contract when its use is approved by the agency head.

(b) The clause is authorized when—

(1) The contract term is 2 years or more;

(2) The contract is estimated to require—

(i) Total RDT&E financing in excess of $25 million; or

(ii) Total production investment in excess of $100 million; and

(3) Adequate funds are available to cover the contingent reserve liability for special termination costs.

(c) The contractor and the contracting officer must agree upon an amount that represents their best estimate of the total special termination costs to which the contractor would be entitled in the event of termination of the contract. Insert this amount in paragraph (c) of the clause.

(d)(1) Consider substituting an alternate paragraph (c) for paragraph (c) of the basic clause when—

(i) The contract covers an unusually long performance period; or

(ii) The contractor's cost risk associated with contingent special termination costs is expected to fluctuate extensively over the period of the contract.

(2) The alternate paragraph (c) should provide for periodic negotiation and adjustment of the amount reserved for special termination costs. Occasions for periodic adjustment may include—

(i) The Government's incremental assignment of funds to the contract;

(ii) The time when certain performance milestones are accomplished by the contractor; or

(iii) Other specific time periods agreed upon by the contracting officer and the contractor.

Subpart 249.70—Special Termination Requirements

249.7000 Terminated contracts with Canadian Commercial Corporation.

(a) Terminate contracts with the Canadian Commercial Corporation in accordance with—

(1) The Letter of Agreement (LOA) between the Department of Defence Production (Canada) and the U.S. DoD, ''Canadian Agreement'' (for a copy of the LOA or for questions on its currency, contact the Foreign Contracting Directorate, Office of the Director of Defense Procurement, (703) 697–9351, DSN 227–9351));

(2) Policies in the Canadian Agreement and part 249; and

(3) The Manual of Procedure on Termination of Contracts, Department of Supply and Services (Canada).

(b) Contracting officers shall ensure that the Canadian Commercial Corporation submits termination settlement proposals in the format prescribed in FAR 49.602 and that they contain the amount of settlements with subcontractors. The termination contracting officer (TCO) shall prepare an appropriate settlement agreement. (See FAR 49.603.) The letter transmitting a settlement proposal must certify—

(1) That disposition of inventory has been completed; and

(2) That the Contracts Settlement Committee of the Supply and Services Canada (SSC) has approved settlements with Canadian subcontractors when the Manual of Procedure on Termination of Contracts, SSC, requires such approval.

(c)(1) The Canadian Commercial Corporation will—

(i) Settle all Canadian subcontractor termination claims under the Canadian Agreement; and

(ii) Submit schedules listing serviceable and usable contractor inventory for screening to the TCO (see FAR 45.6).

(2) After screening, the TCO must provide guidance to the Canadian Commercial Corporation for disposition of the contractor inventory.

(3) Settlement of Canadian subcontractor claims are not subject to the approval and ratification of the TCO. However, when the proposed negotiated settlement exceeds the total contract price of the prime contract, the TCO shall obtain from the U.S. contracting officer prior to final settlement—

(i) Ratification of the proposed settlement; and

(ii) A contract modification increasing the contract price and obligating the additional funds.

(d) The Canadian Commercial Corporation (CCC) should send all termination settlement proposals submitted by U.S. subcontractors and suppliers to the TCO, Defense Contract Management Area Operations, Ottawa, for settlement. The TCO will inform the CCC of the amount of the net settlement of U.S. subcontractors and suppliers so that this amount can be included in the CCC termination proposal. The Canadian Commercial Corporation is responsible for execution of the settlement agreement with these subcontractors.

249.7001 Congressional notification on significant contract terminations.

(a) Congressional notification is required for any termination involving a reduction in employment of 100 or more contractor employees. Proposed terminations must be cleared through department/agency liaison offices before release of the termination notice, or any information on the proposed termination, to the contractor.

(b) Department and agency liaison offices will coordinate timing of the congressional notification and public release of the information with release of the termination notice to the contractor. Department and agency liaison offices are—

(1) Army—Chief, Legislative Liaison (SALL–SPA)

(2) Navy—Chief of Legislative Affairs (OLA–N)

(3) Air Force—SAF/AQC

(4) Defense Advanced Research Projects Agency—CMO

(5) Defense Information Systems Agency—Contract Management Division (Code 260)

(6) Defense Intelligence Agency—RSQ

(7) Defense Logistics Agency—DLA–PP

(8) Defense Mapping Agency—HQ DMA (AQ)

(9) Defense Special Weapons Agency—Acquisition Management Directorate (AM)

(10) National Security Agency/Central Security Service—Chief, Office of Contracting

(11) On-Site Inspection Agency—Acquisition Management Office (AM)

(12) Ballistic Missile Defense Organization—Director of Contracts (BMDO–DCT)

(c) Request clearance to release information in accordance with departmental procedures as soon as possible after the decision to terminate is made. Until clearance has been obtained, treat this information as ''For Official Use Only'' unless the information is classified.

(d) Include the following in the request for clearance—

(1) Contract number, date, and type of contract;

(2) Name of the company;

(3) Nature of contract or end item;

(4) The reason for the termination;

(5) Contract price of the items terminated;

(6) Total number of contractor employees involved, including the Government's estimate of the number who may be discharged;

(7) Statement of anticipated impact on the company and the community;

(8) The area labor category, whether the contractor is a large or small business, and any known impact on hard core disadvantaged employment programs;

(9) Total number of subcontractors involved and the impact in this area; and

(10) An unclassified draft of a suggested press release.

(e) To minimize termination costs, liaison offices will act promptly on all requests for clearances and provide a response not later than two working days after receipt of the request.

(f) This reporting requirement is assigned RCS:DD(I&L)(AR) 1412.

[56 FR 36471, July 31, 1991, as amended at 56 FR 67220, Dec. 30, 1991; 59 FR 27674, May 27, 1994; 61 FR 50455, Sept. 26, 1996]

249.7002 [Reserved]

249.7003 Notification of anticipated contract terminations or reductions.

(a) Section 1372 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103–160) and Section 824 of the National Defense Authorization Act for Fiscal Year 1997 (Pub. L. 104–201) are intended to help establish benefit eligibility under the Job Training Partnership Act (29 U.S.C. 1661 and 1662) for employees of DoD contractors and subcontractors adversely affected by termination or substantial reductions in major defense programs.

(b) Departments and agencies are responsible for establishing procedures to:

(1) Identify which contracts (if any) under major defense programs will be terminated or substantially reduced as a result of the funding levels provided in an appropriations act.

(2) Within 60 days of the enactment of such an act, provide notice of the anticipated termination of or substantial reduction in the funding of affected contracts—

(i) Directly to the Secretary of Labor; and

(ii) Through the contracting officer to each prime contractor.

(c) Use the clause at 252.249–7002, Notification of Anticipated Contract Termination or Reduction, in all contracts under a major defense program.

[61 FR 64637, Dec. 6, 1996; 61 FR 66077, Dec. 16, 1996; 62 FR 49304, Sept. 19, 1997]

PART 250—EXTRAORDINARY CONTRACTUAL ACTIONS

Sec.
250.001 Definitions.

Subpart 250.1—General

250.104 Reports.
250.105 Records.

Subpart 250.2—Delegation of and Limitations on Exercise of Authority

250.201 Delegation of authority.
250.201–70 Delegations.
250.202 Contract adjustment boards.

Subpart 250.3—Contract Adjustments

250.303 Contractor requests.
250.305 Processing cases.
250.305–70 Record of request.
250.305–71 Processing cases to contract adjustment boards.
250.305–72 Processing by the board.
250.306 Disposition.
250.306–70 Record of disposition.

Subpart 250.4—Residual Powers

250.403 Special procedures for unusually hazardous or nuclear risks.
250.403–70 Indemnification under contracts involving both research and development and other work.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36475, July 31, 1991, unless otherwise noted.

250.001 Definitions.

As used in this part,

Secretarial level means—

(1) An official at or above the level of an Assistant Secretary (or Deputy) of Defense or of the Army, Navy, or Air Force; and

(2) A contract adjustment board established by the Secretary concerned.

Subpart 250.1—General

250.104 Reports.

Prepare reports required by this section in accordance with DoDI 4105.69, Miscellaneous Procurement Report. Department and agency supplements identify officials responsible for preparing and processing the reports required by this section.

250.105 Records.

(1) Departments and agencies will—

(i) Prepare a preliminary record when a request for a contract adjustment under FAR 50.3 is filed (see 250.305–70).

(ii) Prepare a final record stating the disposition of the request (see 250.306–70).

(iii) Designate the offices or officials responsible for preparing, submitting, and receiving all records required by this part 250. Records shall be maintained by the contract adjustment boards of the Army, Navy, and Air Force, respectively, and by the headquarters of the defense agencies.

(2) A suggested format for the record is in Table 50–1, Record of Request for Adjustment. This format permits the information required for the preliminary and final records to be combined on one form.

(3) The following instructions are provided for those items which are not self-explanatory:

(i) *Extent of performance as of date of request.* State degree of completion of contract; e.g., 50 percent completed or performance not yet begun. If work is completed, state date of completion and whether final payment has been made.

(ii) *Award procedure.* State whether contract was awarded under sealed bidding or negotiated procedures. Cite specific authority for using other than full and open competition, if applicable, e.g., 10 U.S.C. 2304(c)(1).

(iii) *Type of contract.* State type of contract (see FAR part 16); e.g., FFP (firm fixed-price).

(iv) *Category of case.* State whether the request involves a modification without consideration, a mistake, or an informal commitment. If the case involves more than one category, identify both; list the most significant category first.

(v) *Amount or description of request.* If the request is expressed in dollars, state the amount and whether it is an increase or decrease. If the request cannot be expressed in monetary terms, provide a brief description; e.g., ''Cancellation'' or ''Modification.'' Even if the adjustment is not easily expressed in terms of dollars, if the contractor has made an estimate in the request, that estimate should be stated.

(vi) *Action below Secretarial level.* State the disposition of the case, the office that took the action and the date the action was taken. The disposition should be stated as ''Withdrawn,'' ''Denied,'' ''Approved,'' or ''Forwarded.'' If the request was approved, in whole or in part, state the dollar amount or nature of the action (as explained in paragraph (v) of this section). The date should correspond with the date of the

memorandum of decision or of the letter forwarding the request to the contract adjustment board or other deciding body.

(vii) *Action by contract adjustment board and date.* State the disposition and date of disposition of the case by the contract adjustment board. Provide the same information as for paragraph (vi).

(viii) *Implementation and date.* State the appropriate action; e.g., ''Modification,'' ''New Contract,'' or ''Letter of Denial.''

☐ PRELIMINARY	RECORD OF REQUEST FOR ADJUSTMENT PUBLIC LAW 85–804	FINAL ☐
DATE OF REQUEST		DATE RECEIVED BY GOVERNMENT
CONTRACTOR'S NAME AND ADDRESS		☐ SMALL BUSINESS
NAME AND ADDRESS OF CONTRACTOR'S REPRESENTATIVE, IF ANY		
COGNIZANT CONTRACTING OFFICER OR OFFICE	PROCURING ACTIVITY	
PROPERTY OR SERVICE INVOLVED	EXTENT OF PERFORMANCE AS OF DATE OF REQUEST	
CONTRACT NUMBER	DATE	ADVERTISED OR NEGOTIATED / TYPE OF CONTRACT
CATEGORY OF CASE	AMOUNT OR DESCRIPTION OF REQUEST	
ACTION BELOW SECRETARIAL LEVEL		DATE
ACTION BY CAB		DATE
IMPLEMENTATION		DATE
ADDITIONAL DATA OR REMARKS		
DATE THIS RECORD SIGNED	SIGNATURE	

Subpart 250.2—Delegation of and Limitations on Exercise of Authority

250.201 Delegation of authority.

(b) Authority under FAR subpart 50.2 to approve actions obligating $50,000 or less may not be delegated below the level of the head of the contracting activity; however, see FAR 50.201(d) for indemnification authority.

[56 FR 36475, July 31, 1991, as amended at 59 FR 27675, May 27, 1994]

250.201–70 Delegations.

(a) *Military Departments.* The Departments of the Army, Navy and Air Force will specify delegations and levels of authority for actions under the Act and the Executive Order in departmental supplements.

(b) *Defense Agencies.* Subject to the restrictions on delegations of authority in 250.201(b) and FAR 50.201, the directors of the defense agencies may exercise and redelegate the authority contained in the Act and the Executive Order. The agency supplements shall specify the delegations and levels of authority.

(1) Requests to obligate the Government in excess of $50,000 must be submitted to the Under Secretary of Defense (Acquisition & Technology) (USDA&T)) for approval.

(2) Requests for indemnification against unusually hazardous or nuclear risks must be submitted to the USD(A&T) for approval before using the indemnification clause at FAR 52.250–1, Indemnification Under Public Law 85–804.

(c) *Approvals.* The service Secretary or agency director must approve any delegations in writing.

[56 FR 36475, July 31, 1991, as amended at 56 FR 67221, Dec. 30, 1991; 60 FR 61600, Nov. 30, 1995]

250.202 Contract adjustment boards.

The Departments of the Army, Navy, and Air Force each have a contract adjustment board. The board consists of a Chair and not less than two nor more than six other members, one of whom may be designated the Vice-Chair. A majority constitutes a quorum for any purpose and the concurring vote of a majority of the total board membership constitutes an action of the board. Alternates may be appointed to act in the absence of any member.

Subpart 250.3—Contract Adjustments

250.303 Contractor requests.

Requests should be filed with the procuring contracting officer (PCO). If a request is filed with an administrative contracting officer (ACO), the ACO shall promptly forward it to the PCO for appropriate action. If filing with the PCO is impracticable, requests may be filed with the following addresses for forwarding to the cognizant PCO:

(1) Office of the Secretary of Defense—Washington Headquarters Service, Attn: RE&F–AM.

(2) Army—Forward to the head of the contracting activity listed in Part 202 that appears to be the cognizant office for the contract or commitment involved.

(3) Navy—Assistant Secretary of the Navy (RD&A), Attn: Procurement Policy.

(4) Air Force—Deputy Assistant Secretary (Contracting), Attn: SAF/AQCX.

(5) Defense Advanced Research Projects Agency—Director, CMO.

(6) Defense Information Systems Agency—Attn: Code PA.

(7) Defense Intelligence Agency—Assistant Deputy Director for Procurement, Attn: RSQ.

(8) Defense Logistics Agency—The Commander of the Defense Supply Center involved.

(9) Defense Mapping Agency—Director, DMA, Attn: AQ.

(10) Defense Special Weapons Agency—Director, DSWA, Attn: AM.

(11) National Security Agency—Director, NSA.

(12) On-Site Inspection Agency—Director, OSIA, Attn: DSP.

(13) Ballistic Missile Defense Organization—Director, BMDO.

[56 FR 36475, July 31, 1991, as amended at 56 FR 67221, Dec. 30, 1991; 59 FR 27675, May 27, 1994; 61 FR 50455, Sept. 26, 1996]

250.305 Processing cases.

250.305–70 Record of request.

At the time the request is filed, the activity will prepare the record described at 250.105(1)(i) and forward it to the appropriate official within 30 days after the close of the month in which the record is prepared.

250.305–71 Processing cases to contract adjustment boards.

(a) The officer or official responsible for the case shall forward to the contract adjustment board, through departmental channels, two copies of the following:

(1) A letter stating—

(i) The nature of the case;

(ii) The basis for the board's authority to act;

(iii) The findings of fact essential to the case (see FAR 50.304). Arrange the findings chronologically with cross references to supporting enclosures;

(iv) The conclusions drawn;

(v) The recommended disposition; and

(vi) If contractual action is recommended, a statement by the signer that the action will facilitate the national defense.

(2) The contractor's request

(3) All evidentiary materials

(4) All endorsements, reports and comments of cognizant Government officials

(b) A letter to the Board recommending an amendment without consideration where essentiality is a factor (see FAR 50.302–1(a)) should also provide—

(1) The information required by FAR 50.304 (a) and (b), and

(2) Findings as to—

(i) The contractor's performance record, including the quality of product, rate of production, and promptness of deliveries;

(ii) The importance to the Government, particularly to the active duty military, of the performance of the contract and the importance of the contractor to the national defense;

(iii) The forecast of future contracts with the contractor; and

(iv) Other available sources of supply for the supplies or services covered by the contract, and the time and cost of having contract performance completed by such other sources.

250.305–72 Processing by the board.

Contract adjustment boards will render decisions as expeditiously as practicable. The Chair shall sign a memorandum of decision disposing of the case. The decision shall be dated and shall contain the information required by FAR 50.306. The memorandum of decision shall not contain any information classified ''Confidential'' or higher. The board's decision will be sent to the appropriate official for implementation.

250.306 Disposition.

250.306–70 Record of disposition.

(a) When the request for relief is denied or approved below the Secretarial level, submit the following documents to the appropriate office within 30 days after the close of the month in which the decision is executed:

(1) Two copies of the memorandum of decision;

(2) Except for the Army, one copy of the contractual document implementing any decision approving contractual action; and

(3) One copy of a final record, as described at 250.105.

(b) When a contract adjustment board decision is implemented, the activity which forwarded the case to the board shall prepare and submit to the board the documents identified in paragraphs (a) (2) and (3) of this subsection.

Subpart 250.4—Residual Powers

250.403 Special procedures for unusually hazardous or nuclear risks.

250.403–70 Indemnification under contracts involving both research and development and other work.

When indemnification is to be provided on contracts requiring both research and development work and other work, the contracting officer shall insert an appropriate clause using the authority of both 10 U.S.C. 2354 and Public Law 85–804.

(a) The use of Public Law 85–804 is limited to work which cannot be indemnified under 10 U.S.C. 2354 and is

subject to compliance with FAR subpart 50.4.

(b) Indemnification under 10 U.S.C. 2354 is covered by 235.070.

PART 251—USE OF GOVERNMENT SOURCES BY CONTRACTORS

Sec.

Subpart 251.1—Contractor Use of Government Supply Sources

251.102 Authorization to use Government supply sources.
251.105 Payment for shipments.
251.107 Contract clause.

Subpart 251.2—Contractor Use of Interagency Fleet Management System (IFMS) Vehicles

251.202 Authorization.
251.205 Contract clause.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36479, July 31, 1991, unless otherwise noted.

Subpart 251.1—Contractor Use of Government Supply Sources

251.102 Authorization to use Government supply sources.

(e) Use the format in Table 51–1, Authorization to Purchase from Government Supply Sources. Specify the terms of the purchase, including contractor acceptance of any Government materiel, payment terms, and the addresses required by paragraph (f) of the clause at 252.251–7000, Ordering from Government Supply Sources.

(3)(ii) In addition to the procedure and form authorized by FAR 51.102(e)(3)(ii), contractors may use the DD Form 1155 when requisitioning from the Department of Veterans Affairs.

(f) The authorizing agency shall also be responsible for promptly considering requests of the DoD supply source for authority to refuse to honor requisitions from a contractor which is indebted to the DoD and has failed to pay proper invoices in a timely manner.

TABLE 51–1—AUTHORIZATION TO PURCHASE FROM GOVERNMENT SUPPLY SOURCES

Subject: Authorization to Purchase from Government Supply Sources

(Contractor's Name)

(Contractor's Address)

1. You are hereby authorized to use Government sources in performing Contract No. _____ for the Department of _____, as follows: (Insert applicable purchasing authority given to the contractor.)

2.a. Purchase Orders Under Federal Supply Schedules or Personal Property Rehabilitation Price Schedules. Place orders in accordance with the terms and conditions of the attached Schedule(s) and this authorization. Attach a copy of this authorization to the order (unless a copy was previously furnished to the Federal Supply Schedule or Personal Property Rehabilitation Price Schedule contractor). Insert the following statement in the order:

This order is placed under written authorization from _____ dated _____ ([1]_____).

In the event of any inconsistency between the terms and conditions of this order and those of the Federal Supply Schedule or Personal Property Rehabilitation Price Schedule contract, the latter will govern.

b. Requisitioning from the General Services Administration (GSA) or the Department of Defense (DoD). Place orders in accordance with this authorization and, as appropriate, the:

(1) Federal Standard Requisitioning and Issue Procedures (FEDSTRIP) (GSAFEDSTRIP Operating Guide: FPMR 101–26.2 (41 CFR 101–26.2); copies are available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402); or

(2) Military Standard Requisitioning and Issue Procedures (MILSTRIP) (DoD 4000.25–1–M; copies are available from the Defense Logistics Agency, ATTN: DLA–XPD, Bldg. 6, Dr. 21, Cameron Station, Alexandria, VA 22304–6100).

3. ([3])

4. This authority is not transferable or assignable.

5. The DoD Activity Address Directory (DoDAAD) (DoD 4000.25–6–M) Activity Address Code[2] to which this Authorization applies is _____.

6. This Authorization expires _____.

(Contracting Officer)

[1] Insert "a copy of which is attached," "a copy of which you have on file," or other suitable language, as appropriate.

[2] The sponsoring service assumes responsibility for monitoring and controlling all activity address codes used in the letters of authority.

[3] Insert other provisions, as necessary.

[56 FR 36479, July 31, 1991, as amended at 60 FR 29501, June 5, 1995]

251.105 Payment for shipments.

Contractor payments for purchases from DoD supply sources are due within 30 days of the date of a proper invoice (see FAR 32.902 for definition of ''due date'' and ''payment date;'' also see FAR 32.905(e)).

[60 FR 29501, June 5, 1995]

251.107 Contract clause.

Use the clause at 252.251–7000, Ordering From Government Supply Sources, in solicitations and contracts which include the clause at FAR 52.251–1, Government Supply Sources.

Subpart 251.2—Contractor Use of Interagency Fleet Management System (IFMS) Vehicles

251.202 Authorization.

(a)(2)(A) See FAR 28.307–2(c) for policy on contractor insurance.

(B) See FAR 28.308 for policy on self-insurance.

(C) See FAR 31.205–19 for allowability of insurance costs.

(5) Paragraph (d) of the clause at 252.251–7001 satisfies the requirement of FAR 51.202(a)(5) for a written statement.

251.205 Contract clause.

Use the clause at 252.251–7001, Use of Interagency Fleet Management System (IFMS)Vehicles and Related Services, in solicitations and contracts which include the clause at FAR 52.251–2, Interagency Fleet Management System (IFMS) Vehicles and Related Services.

SUBCHAPTER H—CLAUSES AND FORMS

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.

Subpart 252.1—Instructions for Using Provisions and Clauses

252.101 Using part 252.

Subpart 252.2—Texts of Provisions and Clauses

252.201–7000 Contracting officer's representative.
252.203–7000 [Reserved]
252.203–7001 Special prohibition on employment.
252.203–7002 Display of DoD hotline poster.
252.204–7000 Disclosure of information.
252.204–7001 Commercial and Government Entity (CAGE) code reporting.
252.204–7002 Payment for subline items not separately priced.
252.204–7003 Control of government personnel work product.
252.205–7000 Provision of information to cooperative agreement holders.
252.206–7000 Domestic source restriction.
252.208–7000 Intent to furnish precious metals as Government-furnished material.
252.209–7000 Acquisition from subcontractors subject to on-site inspection under the Intermediate-Range Nuclear Forces (INF) Treaty.
252.209–7001 Disclosure of ownership or control by the government of a terrorist country.
252.209–7002 Disclosure of ownership or control by a foreign government.
252.209–7003 252.209–7004[Reserved]
252.209–7005 Military recruiting on campus.
252.211–7000 Acquisition streamlining.
252.211–7001 Availability of specifications and standards not listed in DODISS, data item descriptions not listed in DoD 5010.12–L, and plans, drawings, and other pertinent documents.
252.211–7002 Availability for examination of specifications, standards, plans, drawings, data item descriptions, and other pertinent documents.
252.211–7003 Brand name or equal.
252.211–7004 Alternate preservation, packaging, and packing.
252.211–7005 Substitutions for military or Federal specifications and standards.
252.212–7000 Offeror representations and certifications—Commercial items.
252.212–7001 Contract terms and conditions required to implement statutes or Executive Orders applicable to Defense acquisitions of commercial items.
252.215–7000 Pricing adjustments.
252.215–7001 [Reserved]
252.215–7002 Cost estimating system requirements.
252.216–7000 Economic price adjustment—basic steel, aluminum, brass, bronze, or copper mill products.
252.216–7001 Economic price adjustment—nonstandard steel items.
252.216–7002 [Reserved]
252.216–7003 Economic price adjustment—wage rates or material prices controlled by a foreign government.
252.217–7000 Exercise of option to fulfill foreign military sales commitments.
252.217–7001 Surge option.
252.217–7002 Offering property for exchange.
252.217–7003 Changes.
252.217–7004 Job orders and compensation.
252.217–7005 Inspection and manner of doing work.
252.217–7006 Title.
252.217–7007 Payments.
252.217–7008 Bonds.
252.217–7009 Default.
252.217–7010 Performance.
252.217–7011 Access to vessel.
252.217–7012 Liability and insurance.
252.217–7013 Guarantees.
252.217–7014 Discharge of liens.
252.217–7015 Safety and health.
252.217–7016 Plant protection.
252.217–7017 Time of delivery.
252.217–7018 Change in plant location—bakery and dairy products.
252.217–7019 Sanitary conditions.
252.217–7020 Examination and testing.
252.217–7021 Deficiency adjustment.
252.217–7022 Code dating.
252.217–7023 Marking.
252.217–7024 Responsibility for containers and equipment.
252.217–7025 Containers and equipment.
252.217–7026 Identification of sources of supply.
252.217–7027 Contract definitization.
252.217–7028 Over and above work.
252.219–7000 Small disadvantaged business concern representation (DoD contracts).
252.219–7001 Notice of partial small business set-aside with preferential consideration for small disadvantaged business concerns.
252.219–7002 Notice of small disadvantaged business set-aside.
252.219–7003 Small, small disadvantaged and women-owned small business subcontracting plan (DoD contracts).

252.219–7004 Small, small disadvantaged and women-owned small business subcontracting plan (test program).
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252.219–7007 [Reserved]
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252.222–7000 Restrictions on employment of personnel.
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252.225–7034 [Reserved]
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252.235–7011 Final scientific or technical report.
252.236–7000 Modification proposals—price breakdown.
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252.236–7002 Obstruction of navigable waterways.
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252.237–7015 Loss or damage (weight of articles).
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252.239–7008 Reuse arrangements.
252.239–7009—252.239–7010 [Reserved]
252.239–7011 Special construction and equipment charges.
252.239–7012 Title to telecommunication facilities and equipment.
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252.239–7014 Term of agreement.
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252.247–7020 Additional services.
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252.247–7023 Transportation of supplies by sea.
252.247–7024 Notification of transportation of supplies by sea.
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252.249–7000 Special termination costs.
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252.251–7000 Ordering from Government supply sources.
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AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36479, July 31, 1991, unless otherwise noted.

Subpart 252.1—Instructions for Using Provisions and Clauses

252.101 Using part 252.

(b) *Numbering.*

(2) *Provisions or clauses that supplement the FAR.*

(ii)(B) DFARS provisions or clauses use a four digit sequential number in the 7000 series, e.g., –7000, –7001, –7002. Department or agency supplemental provisions or clauses use four digit sequential numbers in the 9000 series.

Subpart 252.2—Text of Provisions And Clauses

252.201–7000 Contracting officer's representative.

As prescribed in 201.602–70, use the following clause:

CONTRACTING OFFICER'S REPRESENTATIVE (DEC. 1991)

(a) *Definition. Contracting officer's representative* means an individual designated in accordance with subsection 201.602–2 of the Defense Federal Acquisition Regulation Supplement and authorized in writing by the contracting officer to perform specific technical or administrative functions.

(b) If the Contracting Officer designates a contracting officer's representative (COR), the Contractor will receive a copy of the written designation. It will specify the extent of the COR's authority to act on behalf of the contracting officer. The COR is not authorized to make any commitments or changes that will affect price, quality, quantity, delivery, or any other term or condition of the contract.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 57 FR 42633, Sept. 15, 1992]

252.203–7000 [Reserved]

252.203–7001 Special prohibition on employment.

As prescribed in 203.570–5, use the following clause:

SPECIAL PROHIBITION ON EMPLOYMENT (JUN 1997)

(a) *Definitions.*

As used in this clause—

(1) *Arising out of a contract with the DoD* means any act in connection with—

(i) Attempting to obtain,

(ii) Obtaining, or

(iii) Performing a contract or first-tier subcontract of any agency, department, or component of the Department of Defense (DoD).

(2) *Conviction of fraud or any other felony* means any conviction for fraud or a felony in violation of state or Federal criminal statutes, whether entered on a verdict or plea, including a plea of *nolo contendere,* for which sentence has been imposed.

(3) *Date of conviction* means the date judgment was entered against the individual.

(b) 10 U.S.C. 2408 provides that any individual who is convicted after September 29, 1988, of fraud or any other felony arising out of a contract with the DoD is prohibited from:

(1) Working in a management or supervisory capacity on any DoD contract or first-tier subcontract;

(2) Serving on the board of directors of any DoD contractor or first-tier subcontractor; or

(3) Serving as a consultant to any DoD contractor or first-tier subcontractor.

(c) Unless waived, the prohibition in paragraph (b) applies for five years from the date of conviction.

(d) 10 U.S.C. 2408 further provides that a defense contractor or first-tier subcontractor shall be subject to a criminal penalty of not more than $500,000 if convicted of knowingly—

(1) Employing a person under a prohibition specified in paragraph (b) of this clause; or

(2) Allowing such a person to serve on the board of directors of the contractor or first-tier subcontractor.

(e) In addition to the criminal penalties contained in 10 U.S.C. 2408, the Government may consider other available remedies, such as—

(1) Suspension or debarment;

(2) Cancellation of the contract at no cost to the Government; or

(3) Termination of the contract for default.

(f) The Contractor may submit written requests for waiver of the prohibitions in paragraph (b) of this clause to the Contracting Officer. Requests shall clearly identify—

(1) The person involved;

(2) The nature of the conviction and resultant sentence or punishment imposed;

(3) The reasons for the requested waiver; and,

(4) An explanation of why a waiver is in the interest of national security.

(g) The Contractor agrees to include the substance of this clause, appropriately modified to reflect the identity and relationship of the parties, in all first-tier subcontracts exceeding the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation, except those for commercial items or components.

(h) Pursuant to 10 U.S.C. 2408(c), defense contractors and subcontractors may obtain information as to whether a particular person has been convicted of fraud or any other felony arising out of a contract with the DoD by contacting The Office of Justice Programs, The Denial of Benefits Office, U.S. Department of Justice, telephone (202) 616–3507.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 58 FR 28471, May 13, 1993; 59 FR 27675, May 27, 1994; 60 FR 61600, Nov. 30, 1995; 62 FR 34128, June 24, 1997]

252.203–7002 Display of DoD hotline poster.

As prescribed in 203.7002, use the following clause:

DISPLAY OF DOD HOTLINE POSTER (DEC. 1991)

(a) The Contractor shall display prominently in common work areas within business segments performing work under Department of Defense (DoD) contracts, DoD Hotline Posters prepared by the DoD Office of the Inspector General.

(b) DoD Hotline Posters may be obtained from the DoD Inspector General, Attn: Defense Hotline, 400 Army Navy Drive, Washington, DC 22202–2884.

(c) The Contractor need not comply with paragraph (a) of this clause if it has established a mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

(End of clause)

252.204–7000 Disclosure of Information.

As prescribed in 204.404–70(a), use the following clause:

DISCLOSURE OF INFORMATION (DEC. 1991)

(a) The Contractor shall not release to anyone outside the Contractor's organization any unclassified information, regardless of medium (e.g., film, tape, document), pertaining to any part of this contract or any program related to this contract, unless—

(1) The Contracting Officer has given prior written approval; or

(2) The information is otherwise in the public domain before the date of release.

(b) Requests for approval shall identify the specific information to be released, the medium to be used, and the purpose for the release. The Contractor shall submit its request to the Contracting Officer at least 45 days before the proposed date for release.

(c) The Contractor agrees to include a similar requirement in each subcontract under this contract. Subcontractors shall submit requests for authorization to release through the prime contractor to the Contracting Officer.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 57 FR 14996, Apr. 23, 1992]

252.204–7001 Commercial and Government Entity (CAGE) code reporting.

As prescribed in 204.602–70, use the following provision:

COMMERCIAL AND GOVERNMENT ENTITY (CAGE) CODE REPORTING (DEC. 1991)

(a) The Offeror is requested to enter its CAGE code on its offer in the block with its name and address. The CAGE code entered must be for that name and address. Enter CAGE before the number.

(b) If the Offeror does not have a CAGE code, it may ask the Contracting Officer to request one from the Defense Logistics Services Center (DLSC). The Contracting Officer will—

(1) Ask the Contractor to complete section B of a DD Form 2051, Request for Assignment of a Commercial and Government Entity (CAGE) Code;

(2) Complete section A and forward the form to DLSC; and

(3) Notify the Contractor of its assigned CAGE code.

(c) Do not delay submission of the offer pending receipt of a CAGE code.

(End of provision)

[56 FR 36479, July 31, 1991, as amended at 60 FR 61600, Nov. 30, 1995]

252.204–7002 Payment for subline items not separately priced.

As prescribed in 204.7104–1(b)(3)(iv), use the following clause:

PAYMENT FOR SUBLINE ITEMS NOT SEPARATELY PRICED (DEC. 1991)

(a) If the schedule in this contract contains any contract subline items or exhibit subline items identified as not separately priced (NSP), it means that the unit price for that subline item is included in the unit price of another, related line or subline item.

(b) The Contractor shall not invoice the Government for any portion of a contract line item or exhibit line item which contains an NSP until—

(1) The Contractor has delivered the total quantity of all related contract subline items or exhibit subline items; and

(2) The Government has accepted them.

(c) This clause does not apply to technical data.

(End of clause)

252.204–7003 Control of government personnel work product.

As prescribed in 204.404–70(b), use the following clause:

CONTROL OF GOVERNMENT PERSONNEL WORK PRODUCT (APR. 1992)

The Contractor's procedures for protecting against unauthorized disclosure of information shall not require Department of Defense employees or members of the Armed Forces to relinquish control of their work products, whether classified or not, to the contractor.

(End of clause)

[57 FR 14996, Apr. 23, 1992]

252.205–7000 Provision of information to cooperative agreement holders.

As prescribed in 205.470–2, use the following clause:

PROVISION OF INFORMATION TO COOPERATIVE AGREEMENT HOLDERS (DEC. 1991)

(a) Definition.

Cooperative agreement holder means a State or local government; a private, nonprofit organization; a tribal organization (as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–268; 25 U.S.C. 450(c))); or an economic enterprise (as defined in section 3(e) of the Indian Financing Act of 1974 (Pub. L. 93–362; 25 U.S.C. 1452(e))) whether such economic enterprise is organized for profit or nonprofit purposes; which has an agreement with the Defense Logistics Agency to furnish procurement technical assistance to business entities.

(b) The Contractor shall provide cooperative agreement holders, upon their request, with a list of those appropriate employees or offices responsible for entering into subcontracts under defense contracts. The list shall include the business address, telephone number, and area of responsibility of each employee or office.

(c) The Contractor need not provide the listing to a particular cooperative agreement holder more frequently than once a year.

(End of clause)

252.206–7000 Domestic source restriction.

As prescribed at 206.302–3–70, use the following provision:

DOMESTIC SOURCE RESTRICTION (DEC. 1991)

This solicitation is restricted to domestic sources under the authority of 10 U.S.C. 2304(c)(3). Foreign sources, except Canadian sources, are not eligible for award.

(End of provision)

252.208–7000 Intent to furnish precious metals as Government-furnished material.

As prescribed in 208.7305(a), use the following clause:

INTENT TO FURNISH PRECIOUS METALS AS GOVERNMENT-FURNISHED MATERIAL (DEC. 1991)

(a) The Government intends to furnish precious metals required in the manufacture of items to be delivered under the contract if the Contracting Officer determines it to be in the Government's best interest. The use of Government-furnished silver is mandatory when the quantity required is one hundred troy ounces or more. The precious metal(s) will be furnished pursuant to the Government Furnished Property clause of the contract.

(b) The Offeror shall cite the type (silver, gold, platinum, palladium, iridium, rhodium, and ruthenium) and quantity in whole troy ounces of precious metals required in the performance of this contract (including precious metals required for any first article or

production sample), and shall specify the national stock number (NSN) and nomenclature, if known, of the deliverable item requiring precious metals.

Precious metal*	Quantity	Deliverable item (NSN and nomenclature)!!rs

*If platinum or palladium, specify whether sponge or granules are required.

(c) Offerors shall submit two prices for each deliverable item which contains precious metals—one based on the Government furnishing precious metals, and one based on the Contractor furnishing precious metals. Award will be made on the basis which is in the best interest of the Government.

(d) The Contractor agrees to insert this clause, including this paragraph (d), in solicitations for subcontracts and purchase orders issued in performance of this contract, unless the Contractor knows that the item being purchased contains no precious metals.

(End of clause)

252.209–7000 Acquisition from subcontractors subject to on-site inspection under the Intermediate-Range Nuclear Forces (INF) Treaty.

As prescribed in 209.103–70, use the following clause:

ACQUISITION FROM SUBCONTRACTORS SUBJECT TO ON-SITE INSPECTION UNDER THE INTERMEDIATE-RANGE NUCLEAR FORCES (INF) TREATY (NOV 1995)

(a) The Contractor shall not deny consideration for a subcontract award under this contract to a potential subcontractor subject to on-site inspection under the INF Treaty, or a similar treaty, solely or in part because of the actual or potential presence of Soviet inspectors at the subcontractor's facility, unless the decision is approved by the Contracting Officer.

(b) The Contractor shall incorporate this clause, including this paragraph (b), in all solicitations and contracts exceeding the simplified acquisition threshold in part 13 of the Federal Acquisition Regulation, except those for commercial items.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 60 FR 61600, Nov. 30, 1995]

252.209–7001 Disclosure of ownership or control by the government of a terrorist country.

As prescribed in 209.104–70(a), use the following provision:

DISCLOSURE OF OWNERSHIP OR CONTROL BY THE GOVERNMENT OF A TERRORIST COUNTRY (SEP. 1994)

(a) *Definitions.* As used in this provision—

(1) *Government of a terrorist country* includes the state and the government of a terrorist country, as well as any political subdivision, agency, or instrumentality thereof.

(2) *Terrorist country* means a country determined by the Secretary of State, under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(i)(A)), to be a country the government of which has repeatedly provided support for acts of international terrorism. As of the date of this provision, terrorist countries include: Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

(3) *Significant interest* means—

(i) Ownership of or beneficial interest in 5 percent or more of the firm's or subsidiary's securities. Beneficial interest includes holding 5 percent or more of any class of the firm's securities in ''nominee shares,'' ''street names,'' or some other method of holding securities that does not disclose the beneficial owner;

(ii) Holding a management position in the firm, such as a director or officer;

(iii) Ability to control or influence the election, appointment, or tenure of directors or officers in the firm;

(iv) Ownership of 10 percent or more of the assets of a firm such as equipment, buildings, real estate, or other tangible assets of the firm; or

(v) Holding 50 percent or more of the indebtedness of a firm.

(b) *Prohibition on award.* In accordance with 10 U.S.C. 2327, no contract may be awarded to a firm or a subsidiary of a firm if the government of a terrorist country has a significant interest in the firm or subsidiary, unless a waiver is granted by the Secretary of Defense.

(c) *Disclosure.* If the government of a terrorist country has a significant interest in the Offeror or a subsidiary of the Offeror, the Offeror shall disclose such interest in an attachment to its offer. If the Offeror is a subsidiary, it shall also disclose any significant interest the government of a terrorist country has in any firm that owns or controls the subsidiary. The disclosure shall include—

(1) Identification of each government holding a significant interest; and

(2) A description of the significant interest held by each government.

(End of provision)

[59 FR 51131, Oct. 7, 1994]

252.209–7002 Disclosure of ownership or control by a foreign government.

As prescribed in 209.104–70(b), use the following provision:

DISCLOSURE OF OWNERSHIP OR CONTROL BY A FOREIGN GOVERNMENT (SEP. 1994)

(a) *Definitions.* As used in this provision—

(1) *Effectively owned or controlled* means that a foreign government or any entity controlled by a foreign government has the power, either directly or indirectly, whether exercised or exercisable, to control the election, appointment, or tenure of the Offeror's officers or a majority of the Offeror's board of directors by any means, e.g., ownership, contract, or operation of law (or equivalent power for unincorporated organizations).

(2) *Entity controlled by a foreign government*—

(i) Means—

(A) Any domestic or foreign organization or corporation that is effectively owned or controlled by a foreign government; or

(B) Any individual acting on behalf of a foreign government.

(ii) Does not include an organization or corporation that is owned, but is not controlled, either directly or indirectly, by a foreign government if the ownership of that organization or corporation by that foreign government was effective before October 23, 1992.

(3) *Foreign government* includes the state and the government of any country (other than the United States and its possessions and trust territories) as well as any political subdivision, agency, or instrumentality thereof.

(4) *Proscribed information* means—

(i) Top Secret information;

(ii) Communications Security (COMSEC) information, except classified keys used to operate secure telephone units (STU IIIs);

(iii) Restricted Data as defined in the U.S. Atomic Energy Act of 1954, as amended;

(iv) Special Access Program (SAP) information; or

(v) Sensitive Compartmented Information (SCI).

(b) *Prohibition on award.* No contract under a national security program may be awarded to an entity controlled by a foreign government if that entity requires access to proscribed information to perform the contract, unless the Secretary of Defense or a designee has waived application of 10 U.S.C. 2536(a).

(c) *Disclosure.* The Offeror shall disclose any interest a foreign government has in the Offeror when that interest constitutes control by a foreign government as defined in this provision. If the Offeror is a subsidiary, it shall also disclose any reportable interest a foreign government has in any entity that owns or controls the subsidiary, including reportable interest concerning the Offeror's immediate parent, intermediate parents, and the ultimate parent. Use separate paper as needed, and provide the information in the following format: Offeror's Point of Contact for Questions about Disclosure (Name and Phone Number with Country Code, City Code and Area Code, as applicable)

Name and Address of Offeror	
Name and Address of Entity Controlled by a Foreign Government.	Description of Interest, Ownership Percentage, and Identification of Foreign Government

(End of provision)

[58 FR 28471, May 13, 1993, as amended at 59 FR 51133, Oct. 7, 1994]

252.209–7003—252.209–7004 [Reserved]

252.209–7005 Military recruiting on campus.

As prescribed in 209.470–3, use the following clause:

MILITARY RECRUITING ON CAMPUS (FEB 1996)

(a) *Definition.*

Directory information, as used in this clause, means, with respect to a student, the student's name, address, telephone listing, date and place of birth, level of education, degrees received, and the most recent previous educational institution enrolled in by the student. Students are individuals who are 17 years of age or older.

(b) *General.* An institution of higher education that has been determined, using procedures established by the Secretary of Defense at 32 CFR part 216: (1) to have a policy of denying, or (2) to effectively prevent the Secretary of Defense from obtaining for military recruiting purposes, entry to such institution's campuses, access to students on those campuses, or access to directory information pertaining to its students, is ineligible for contract award and payments under existing contracts. In addition, the Government shall terminate this contract for the Contractor's material failure to comply with the terms and conditions of award.

(c) *Agreement.* The contractor represents that it does not now have and agrees that during performance of this contract it will not adopt a policy of denying, and that it does not, is not, and will not during performance of the contract, effectively prevent the Secretary of Defense from obtaining for military recruiting purposes entry to campuses, access to students on campuses, or access to directory information pertaining to students.

(End of clause)

[60 FR 13074, Mar. 10, 1995. Redesignated and amended at 60 FR 61600, Nov. 30, 1995; 61 FR 7750, Feb. 29, 1996]

252.211–7000 Acquisition streamlining.

As prescribed in 211.002–70, use the following clause:

ACQUISITION STREAMLINING (DEC. 1991)

(a) The Government's acquisition streamlining objectives are to—

(1) Acquire systems that meet stated performance requirements;

(2) Avoid over-specification; and

(3) Ensure that cost effective requirements are included in future acquisitions.

(b) The Contractor shall—

(1) Prepare and submit acquisition streamlining recommendations in accordance with the statement of work of this contract; and

(2) Format and submit the recommendations as prescribed by data requirements on the contract data requirements list of this contract.

(c) The Government has the right to accept, modify, or reject the Contractor's recommendations.

(d) The Contractor shall insert this clause, including this paragraph (d), in all subcontracts over $1 million, awarded in the performance of this contract.

(End of clause)

[56 FR 36479, July 31, 1991. Redesignated and amended at 60 FR 61600, Nov. 30, 1995]

252.211–7001 Availability of specifications and standards Not listed in DODISS, data item descriptions Not listed in DoD 5010.12–L, and plans, drawings, and other pertinent documents.

As prescribed in 211.204(c), use the following provision:

AVAILABILITY OF SPECIFICATIONS AND STANDARDS NOT LISTED IN DODISS, DATA ITEM DESCRIPTIONS NOT LISTED IN DOD 5010.12–L, AND PLANS, DRAWINGS, AND OTHER PERTINENT DOCUMENTS (DEC. 1991)

Offerors may obtain the specifications, standards, plans, drawings, data item descriptions, and other pertinent documents cited in this solicitation by submitting a request to:

(Activity) _____

(Complete Address) _____

Include the number of the solicitation and the title and number of the specification, standard, plan, drawing, or other pertinent document.

(End of provision)

[56 FR 36479, July 31, 1991. Redesignated and amended at 60 FR 61600, Nov. 30, 1995]

252.211–7002 Availability for examination of specifications, standards, plans, drawings, data item descriptions, and other pertinent documents.

As prescribed in 211.204(c), use the following provision:

AVAILABILITY FOR EXAMINATION OF SPECIFICATIONS, STANDARDS, PLANS, DRAWINGS, DATA ITEM DESCRIPTIONS, AND OTHER PERTINENT DOCUMENTS (DEC. 1991)

The specifications, standards, plans, drawings, data item descriptions, and other pertinent documents cited in this solicitation are not available for distribution but may be examined at the following location:

_____

(Insert complete address)

(End of provision)

[56 FR 36479, July 31, 1991. Redesignated and amended at 60 FR 61600, Nov. 30, 1995]

252.211–7003 Brand name or equal.

As prescribed in 211.270–2, use the following provision:

BRAND NAME OR EQUAL (DEC. 1991)

(a) If items in this solicitation are identified as ''brand name or equal,'' the term is intended to be descriptive not restrictive. The ''brand name or equal'' description is used to portray the characteristics and level of quality that will satisfy the Government's needs. The salient physical, functional, and other characteristics which ''equal'' products must meet are specified in the solicitation.

(b) To be considered for award, offers of ''equal'' products, including products (other than the ''brand name'' item) of the brand name manufacturer, must—

(1) Meet the salient physical, functional, and other characteristics specified in this solicitation;

(2) Clearly identify the item by—

(i) Brand name, if any; and

(ii) Make or model number;

(3) Include descriptive literature such as cuts, illustrations, drawings, or a clear reference to previously furnished descriptive data or information available to the Contracting Officer; and

(4) Clearly describe any modifications the Offeror plans to make in a product to make it conform to the solicitation requirements. Mark any descriptive material to clearly show the modifications.

(c) The Contracting Officer will evaluate ''equal'' products on the basis of information furnished by the Offeror or identified in the offer and reasonably available to the Contracting Officer. The Contracting Officer is not responsible for locating or securing any information not identified in the offer and reasonably available.

(d) Unless the Offeror clearly indicates in the offer that the product being offered is an ''equal'' product, the Contracting Officer will consider the offer as offering a brand name product referenced in the solicitation.

(End of provision)

[56 FR 36479, July 31, 1991. Redesignated and amended at 60 FR 61600, Nov. 30, 1995]

252.211–7004 Alternate preservation, packaging, and packing.

As prescribed in 211.272, use the following provision:

ALTERNATE PRESERVATION, PACKAGING, AND PACKING (DEC. 1991)

(a) The Offeror may submit two unit prices for each item—one based on use of the military preservation, packaging, or packing requirements of the solicitation; and an alternate based on use of commercial or industrial preservation, packaging, or packing of equal or better protection than the military.

(b) If the Offeror submits two unit prices, the following information, as a minimum, shall be submitted with the offer to allow evaluation of the alternate—

(1) The per unit/item cost of commercial or industrial preservation, packaging, and packing;

(2) The per unit/item cost of military preservation, packaging, and packing;

(3) The description of commercial or industrial preservation, packaging, and packing procedures, including material specifications, when applicable, to include—

(i) Method of preservation;

(ii) Quantity per unit package;

(iii) Cleaning/drying treatment;

(iv) Preservation treatment;

(v) Wrapping materials;

(vi) Cushioning/dunnage material;

(vii) Thickness of cushioning;

(viii) Unit container;

(ix) Unit package gross weight and dimensions;

(x) Packing; and

(xi) Packing gross weight and dimensions; and

(4) Item characteristics, to include—

(i) Material and finish;

(ii) Net weight;

(iii) Net dimensions; and

(iv) Fragility.

(c) If the Contracting Officer does not evaluate or accept the Offeror's proposed alternate commercial or industrial preservation, packaging, or packing, the Offeror agrees to preserve, package, or pack in accordance with the specified military requirements.

(End of provision)

[56 FR 36479, July 31, 1991. Redesignated and amended at 60 FR 61600, Nov. 30, 1995]

252.211–7005 Substitutions for military or Federal specifications and standards.

As prescribed in 211.273–4, use the following clause:

SUBSTITUTIONS FOR MILITARY OR FEDERAL SPECIFICATIONS AND STANDARDS (AUG 1997)

(a) *Definition.* ''SPI process,'' as used in this clause, means a management or manufacturing process that has been accepted previously by the Department of Defense under the Single Process Initiative (SPI) for use in lieu of a specific military or Federal specification or standard. Under SPI, these processes are reviewed and accepted by a Management Council, which includes representatives from the Defense Contract Management Command, the Defense Contract Audit Agency, and the military departments.

(b) Offerors are encouraged to propose SPI processes in lieu of military or Federal specifications and standards cited in the solicitation.

(c) An offeror proposing to use an SPI process shall—

(1) Identify the specific military or Federal specification or standard for which the SPI process has been accepted, and the specific paragraph or other location in the solicitation where the military or Federal specification or standard is required;

(2) Provide a copy of the Department of Defense acceptance of the SPI process;

(3) Identify each facility at which the offeror proposes to use the specific SPI process; and

(4) Unless provided in response to paragraph (c)(2) of this clause, provide the name and telephone number of the cognizant Administrative Contracting Officers for each facility where the SPI process is proposed for use.

(d) Absent a determination at the head of the contracting activity or program executive officer level that an SPI process is not acceptable for this procurement, the Contractor shall use the following SPI processes in lieu of military or Federal specifications and standards:

(Offeror Insert Information for Each SPI Process)

SPI Process:

Facility:
Military or Federal Specification or Standard:
Affected Contract Line Item and Subline Item Number and Requirement Citation:
Cognizant Administrative Contracting Officer:

(End of clause)

[62 FR 44224, Aug. 20, 1997]

252.212–7000 Offeror representations and certifications—Commercial items.

As prescribed in 212.301(f)(ii), use the following provision:

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—COMMERCIAL ITEMS (NOV 1995)

(a) *Definitions.*

As used in this clause—

(1) *Foreign person* means any person other than a United States person as defined in Section 16(2) of the Export Administration Act of 1979 (50 U.S.C. App. Sec. 2415).

(2) *United States person* is defined in Section 16(2) of the Export Administration Act of 1979 and means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern), and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations of the President.

(b) *Certification.*

By submitting this offer, the Offeror, if a foreign person, company or entity, certifies that it—

(1) Does not comply with the Secondary Arab Boycott of Israel; and

(2) Is not taking or knowingly agreeing to take any action, with respect to the Secondary Boycott of Israel by Arab countries, which 50 U.S.C. App. Sec. 2407(a) prohibits a United States person from taking.

(c) *Representation of Extent of Transportation by Sea.* (This representation does not apply to solicitations for the direct purchase of ocean transportation services).

(1) The Offeror shall indicate by checking the appropriate blank in paragraph (c)(2) of this provision whether transportation of supplies by sea is anticipated under the resultant contract. The term ''supplies'' is defined in the Transportation of Supplies by Sea clause of this solicitation.

(2) *Representation.*

The Offeror represents that it—

_____ Does anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

_____ Does not anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

(3) Any contract resulting from this solicitation will include the Transportation of Supplies by Sea clause. If the Offeror represents that it will not use ocean transportation, the resulting contract will also include the Defense Federal Acquisition Regulation Supplement clause at 252.247–7024, Notification of Transportation of Supplies by Sea.

(End of provision)

[60 FR 61600, Nov. 30, 1995, as amended at 61 FR 50455, Sept. 26, 1996]

252.212–7001 Contract terms and conditions required to implement statutes or Executive Orders applicable to Defense acquisitions of commercial items.

As prescribed in 212.301(f)(iii), use the following clause:

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF COMMERCIAL ITEMS (JUL 1997)

(a) The Contractor agrees to comply with the Defense Federal Acquisition Regulation Supplement (DFARS) clause 252.247–7023, Transportation of Supplies by Sea, which is included in this contract by reference to implement 10 U.S.C. 2631.

(b) The Contractor agrees to comply with any clause that is checked on the following list of DFARS clauses which, if checked, is included in this contract by reference to implement provisions of law or Executive Orders applicable to acquisitions of commercial items or components.

_____ 252.205–7000 Provision of Information to Cooperative Agreement Holders (10 U.S.C. 2416).

_____ 252.206–7000 Domestic Source Restriction (10 U.S.C. 2304).

_____ 252.219–7001 Notice of Partial Small Business Set-Aside with Preferential Consideration for Small Disadvantaged Business Concerns (___ Alternate I) (Section 9004, Pub. L. 101–165 (10 U.S.C. 2301 (repealed) note)).

_____ 252.219–7002 Notice of Small Disadvantaged Business Set-Aside (___ Alternate I) (15 U.S.C. 644).

_____ 252.219–7003 Small Business and Small Disadvantaged Business Subcontracting Plan (DoD Contracts) (15 U.S.C. 637).

_____ 252.219–7005 Incentive for Subcontracting with Small Businesses, Small Disadvantaged Businesses, Historically Black Colleges and Universities and Minority Institutions (____ Alternate I) (Section 9004, Pub. L. 101–165 (10 U.S.C. 2301 (repealed) note)).

_____ 252.219–7006 Noice of Evaluation Preference for Small Disadvantaged Business Concerns (____ Alternate I) (15 U.S.C. 644).

_____ 252.225–7001 Buy American Act and Balance of Payment Program (41 U.S.C. 10, E.O. 10582).

_____ 252.225–7007 Trade Agreements (10 U.S.C. 2501–2582).

_____ 252.225–7012 Preference for Certain Domestic Commodities.

_____ 252.225–7014 Preference for Domestic Speciality Metals (10 U.S.C. 2241 note).

_____ 252.225–7015 Preference for Domestic Hand or Measuring Tools (10 U.S.C. 2241 note).

_____ 252.225–7027 Restriction on Contingent Fees for Foreign Military Sales (22 U.S.C. 2779).

_____ 252.225–7028 Exclusionary Policies and Practices of Foreign Governments (22 U.S.C. 2755).

_____ 252.225–7029 Restriction on Acquisition of Air Circuit Breakers (10 U.S.C. 2534(a)(3)).

_____ 252.225–7036 North American Free Trade Agreement Implementation Act.

_____ 252.227–7015 Technical Data—Commercial Items (10 U.S.C. 2320).

_____ 252.227–7037 Validation of Restrictive Markings on Technical Data (10 U.S.C. 2321).

_____ 252.242–7002 Submission of Commercial Freight Bills for Audit (31 U.S.C. 3726).

_____ 252.243–7002 Certification of Requests for Equitable Adjustment (10 U.S.C. 2410)

_____ 252.247–7024 Notification of Transportation of Supplies by Sea (10 U.S.C. 2631).

_____ 252.249–7001 Notification of Substantial Impact on Employment (10 U.S.C. 2501 note).

(c) In addition to the clauses listed in paragraph (e) of the Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items clause of this contract, the Contractor shall include the terms of the following clause, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

252.225–7014, Preference for Domestic Specialty Metals, Alternate I (10 U.S.C. 2241 note).

(End of clause)

[60 FR 61601, Nov. 30, 1995, as amended at 61 FR 50455, Sept. 26, 1996; 61 FR 58489, Nov. 15, 1996; 62 FR 2614, 2617, Jan. 17, 1997; 62 FR 5780, Feb. 7, 1997; 62 FR 37147, July 11, 1997]

252.215–7000 Pricing adjustments.

As prescribed in 215.804–8, use the following clause:

PRICING ADJUSTMENTS (DEC. 1991)

The term ''pricing adjustment,'' as used in paragraph (a) of the clauses entitled ''Price Reduction for Defective Cost or Pricing Data—Modifications,'' ''Subcontractor Cost or Pricing Data,'' and ''Subcontractor Cost or Pricing Data—Modifications,'' means the aggregate increases and/or decreases in cost plus applicable profits.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 62 FR 40473, July 29, 1997]

252.215–7001 [Reserved]

252.215–7002 Cost estimating system requirements.

As prescribed in 215.811–70(h), use the following clause:

COST ESTIMATING SYSTEM REQUIREMENTS (JUL 1997)

(a) *Definition.*

Estimating system means the Contractor's policies, procedures, and practices for generating estimates of costs and other data included in proposals submitted to customers in the expectation of receiving contract awards. Estimating system includes the Contractor's—

(1) Organizational structure;

(2) Established lines of authority, duties, and responsibilities;

(3) Internal controls and managerial reviews;

(4) Flow of work, coordination, and communication; and

(5) Estimating methods, techniques, accumulation of historical costs, and other analyses used to generate cost estimates.

(b) *General.* (1) The Contractor shall establish, maintain, and comply with an estimating system that is consistently applied and produces reliable, verifiable, supportable, and documented cost estimates that are an acceptable basis for negotiation of fair and reasonable prices.

(2) The system should be—

(i) Consistent and integrated with the Contractor's related management systems; and

(ii) Subject to applicable financial control systems.

(c) *Applicability.* Paragraphs (d) and (e) of this clause apply if the contractor is a large business and either—

(1) In its fiscal year preceding award of this contract, received Department of Defense (DoD) prime contracts or subcontracts, totaling $50 million or more for which cost or pricing data were required; or

(2) In its fiscal year preceding award of this contract—

(i) Received DoD prime contracts or subcontracts totaling $10 million or more (but less than $50 million) for which cost or pricing data were required; and

(ii) Was notified in writing by the Contracting Officer that paragraphs (d) and (e) of this clause apply.

(d) *System requirements.* (1) The Contractor shall disclose its estimating system to the Administrative Contracting Officer (ACO) in writing. If the Contractor wishes the Government to protect the information as privileged or confidential, the Contractor must mark the documents with the appropriate legends before submission.

(2) An estimating system disclosure is adequate when the Contractor has provided the ACO with documentation which—

(i) Accurately describes those policies, procedures, and practices that the Contractor currently uses in preparing cost proposals; and

(ii) Provides sufficient detail for the Government to reasonably make an informed judgment regarding the adequacy of the contractor's estimating practices.

(3) The Contractor shall—

(i) Comply with its disclosed estimating system; and

(ii) Disclose significant changes to the cost estimating system to the ACO on a timely basis.

(e) *Estimating system deficiencies.* (1) The Contractor shall respond to a written report from the Government which identifies deficiencies in the Contractor's estimating system as follows:

(i) If the Contractor agrees with the report findings and recommendations, the Contractor shall—

(A) Within 30 days, state its agreement in writing; and

(B) Within 60 days, correct the deficiencies or submit a corrective action plan showing proposed milestones and actions leading to elimination of the deficiencies.

(ii) If the Contractor disagrees with the report, the Contractor shall, within 30 days, state its rationale for disagreeing.

(2) The ACO will evaluate the Contractor's response and notify the Contractor of the determination concerning remaining deficiencies and/or the adequacy of any proposed or completed corrective action.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 62 FR 40473, July 29, 1997]

252.216–7000 Economic price adjustment—basic steel, aluminum, brass, bronze, or copper mill products.

As prescribed in 216.203–4–70(a), use the following clause:

ECONOMIC PRICE ADJUSTMENT—BASIC STEEL, ALUMINUM, BRASS, BRONZE, OR COPPER MILL PRODUCTS (JUL 1997)

(a) *Definitions.*

As used in this clause—

Established price means a price which is an established catalog or market price for a commercial item sold in substantial quantities to the general public.

Unit price excludes any part of the price which reflects requirements for preservation, packaging, and packing beyond standard commercial practice.

(b) The Contractor warrants that the unit price stated for (*Identify the item*) is not in excess of the Contractor's established price in effect on the date set for opening of bids (or the contract date if this is a negotiated contract) for like quantities of the same item. This price is the net price after applying any applicable standard trade discounts offered by the Contractor from its catalog, list, or schedule price.

(c) The Contractor shall promptly notify the Contracting Officer of the amount and effective date of each decrease in any established price.

(1) Each corresponding contract unit price shall be decreased by the same percentage that the established price is decreased.

(2) This decrease shall apply to items delivered on or after the effective date of the decrease in the Contractor's established price.

(3) This contract shall be modified accordingly.

(d) If the Contractor's established price is increased after the date set for opening of bids (or the contract date if this is a negotiated contract), upon the Contractor's written request to the Contracting Officer, the corresponding contract unit price shall be increased by the same percentage that the established price is increased, and this contract shall be modified accordingly, provided—

(1) The aggregate of the increases in any contract unit price under this contract shall not exceed 10 percent of the original contract unit price;

(2) The increased contract unit price shall be effective on the effective date of the increase in the applicable established price if

the Contractor's written request is received by the Contracting Officer within ten days of the change. If it is not, the effective date of the increased unit price shall be the date of receipt of the request by the Contracting Officer; and

(3) The increased contract unit price shall not apply to quantities scheduled for delivery before the effective date of the increased contract unit price unless the Contractor's failure to deliver before that date results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the Default clause of this contract.

(4) The Contracting Officer shall not execute a modification incorporating an increase in a contract unit price under this clause until the increase is verified.

(e) Within 30 days after receipt of the Contractor's written request, the Contracting Officer may cancel, without liability to either party, any portion of the contract affected by the requested increase and not delivered at the time of such cancellation, except as follows—

(1) The Contractor may, after that time, deliver any items that were completed or in the process of manufacture at the time of receipt of the cancellation notice, provided the Contractor notifies the Contracting Officer of such items within 10 days after the Contractor receives the cancellation notice.

(2) The Government shall pay for those items at the contract unit price increased to the extent provided by paragraph (d) of this clause.

(3) Any standard steel supply item shall be deemed to be in the process of manufacture when the steel for that item is in the state of processing after the beginning of the furnace melt.

(f) Pending any cancellation of this contract under paragraph (e) of this clause, or if there is no cancellation, the Contractor shall continue deliveries according to the delivery schedule of the contract. The Contractor shall be paid for those deliveries at the contract unit price increased to the extent provided by paragraph (d) of this clause.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 62 FR 2614, Jan. 17, 1997; 62 FR 40473, July 29, 1997]

252.216–7001 Economic price adjustment—nonstandard steel items.

As prescribed in 216.203–4–70(b), use the following clause:

ECONOMIC PRICE ADJUSTMENT—NONSTANDARD STEEL ITEMS (JUL 1997)

(a) *Definitions.*

As used in this clause—

Base labor index means the average of the labor indices for the three months which consist of the month of bid opening (or offer submission) and the months immediately preceding and following that month.

Base steel index means the Contractor's established price (see note 6) including all applicable extras of $_____ per _____ (see note 1) for _____ (see note 2) on the date set for bid opening (or the date of submission of the offer).

Current labor index means the average of the labor indices for the month in which delivery of supplies is required to be made and the month preceding.

Current steel index means the Contractor's established price (see note 6) for that item, including all applicable extras in effect _____ days (see note 3) prior to the first day of the month in which delivery is required.

Established price is—

(1) A price which is an established catalog or market price of a commercial item sold in substantial quantities to the general public; and

(2) The net price after applying any applicable standard trade discounts offered by the Contractor from its catalog, list, or schedule price. (But see Note 6.)

Labor index means the average straight time hourly earnings of the Contractor's employees in the _____ shop of the Contractor's _____ plant (see note 4) for any particular month.

Month means calendar month. However, if the Contractor's accounting period does not coincide with the calendar month, then that accounting period shall be used in lieu of *month*.

(b) Each contract unit price shall be subject to revision, under the terms of this clause, to reflect changes in the cost of labor and steel. For purpose of this price revision, the proportion of the contract unit price attributable to costs of labor not otherwise included in the price of the steel item identified under the *base steel index* definition in paragraph (a) shall be _____ percent, and the proportion of the contract unit price attributable to the cost of steel shall be _____ percent. (See note 5.)

(c)(1) Unless otherwise specified in this contract, the labor index shall be computed by dividing the total straight time earnings of the Contractor's employees in the shop identified in paragraph (a) for any given month by the total number of straight time hours worked by those employees in that month.

(2) Any revision in a contract unit price to reflect changes in the cost of labor shall be computed solely by reference to the ''*base labor index*'' and the ''*current labor index*.''

(d) Any revision in a contract unit price to reflect changes in the cost of steel shall be

computed solely by reference to the ''*base steel index*'' and the ''*current steel index*.''

(e)(1) Each contract unit price shall be revised for each month in which delivery of supplies is required to be made.

(2) The revised contract unit price shall apply to the deliveries of those quantities required to be made in that month regardless of when actual delivery is made.

(3) Each revised contract unit price shall be computed by adding—

(i) The adjusted cost of labor (obtained by multiplying _____ percent of the contract unit price by a fraction, of which the numerator shall be the current labor index and the denominator shall be the base labor index);

(ii) The adjusted cost of steel (obtained by multiplying _____ percent of the contract unit price by a fraction, of which the numerator shall be the current steel index and the denominator shall be the base steel index); and

(iii) The amount equal to _____ percent of the original contract unit price (representing that portion of the unit price which relates neither to the cost of labor nor the cost of steel, and which is therefore not subject to revision (see note 5)).

(4) The aggregate of the increases in any contract unit price under this contract shall not exceed ten percent of the original contract unit price.

(5) Computations shall be made to the nearest one-hundredth of one cent.

(f)(1) Pending any revisions of the contract unit prices, the Contractor shall be paid the contract unit price for deliveries made.

(2) Within 30 days after final delivery (or such other period as may be authorized by the Contracting Officer), the Contractor shall furnish a statement identifying the correctness of—

(i) The average straight time hourly earnings of the Contractor's employees in the shop identified in paragraph (a) that are relevant to the computations of the *base labor index* and the *current labor index;* and

(ii) The Contractor's established prices (see note 6), including all applicable extras for like quantities of the item that are relevant to the computation of the *base steel index* and the *current steel index*.

(3) Upon request of the Contracting Officer, the Contractor shall make available all records used in the computation of the labor indices.

(4) Upon receipt of the statement, the Contracting Officer will compute the revised contract unit prices and modify the contract accordingly. No modification to this contract will be made pursuant to this clause until the Contracting Officer has verified the revised established price (see note 6).

(g)(1) In the event any item of this contract is subject to a total or partial termination for convenience, the month in which the Contractor receives notice of the termination, if prior to the month in which delivery is required, shall be considered the month in which delivery of the terminated item is required for the purposes of determining the current labor and steel indices under paragraphs (c) and (d).

(2) For any item which is not terminated for convenience, the month in which delivery is required under the contract shall continue to apply for determining those indices with respect to the quantity of the non-terminated item.

(3) If this contract is terminated for default, any price revision shall be limited to the quantity of the item which has been delivered by the Contractor and accepted by the Government prior to receipt by the Contractor of the notice of termination.

(h) If the Contractor's failure to make delivery of any required quantity arises out of causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the clause of this contract entitled ''*Default,*'' the quantity not delivered shall be delivered as promptly as possible after the cessation of the cause of the failure, and the delivery schedule set forth in this contract shall be amended accordingly.

Notes:

1 Offeror insert the unit price and unit measure of the standard steel mill item to be used in the manufacture of the contract item.

2 Offeror identify the standard steel mill item to be used in the manufacture of the contract item.

3 Offeror insert best estimate of the number of days required for processing the standard steel mill item in the shop identified under the *labor index* definition.

4 Offeror identify the shop and plant in which the standard steel mill item identified under the *base steel index* definition will be finally fabricated or processed into the contract item.

5 Offeror insert the same percentage figures for the corresponding blanks in paragraphs (b), (e)(3)(i), and (e)(3)(ii). In paragraph (e)(3)(iii), insert the percentage representing the difference between the sum of the percentages inserted in paragraph (b) and 100 percent.

6 In negotiated acquisitions of nonstandard steel items, when there is no *established price* or when it is not desirable to use this price, this paragraph may refer to another appropriate price basis, e.g., an established interplant price.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 62 FR 2614, Jan. 17, 1997; 62 FR 40473, July 29, 1997]

252.216–7002 [Reserved]

252.216–7003 Economic price adjustment—wage rates or material prices controlled by a foreign government.

As prescribed in 216.203–4–70(c), use the following clause:

ECONOMIC PRICE ADJUSTMENT—WAGE RATES OR MATERIAL PRICES CONTROLLED BY A FOREIGN GOVERNMENT (JUNE 1997)

(a) The Contractor represents that the prices set forth in this contract—

(1) Are based on the wage rate(s) or material price(s) established and controlled by the Government of_____(*Offeror insert name of host country*); and

(2) Do not include contingency allowances to pay for possible increases in wage rates or material prices.

(b) If wage rates or material prices are revised by the government named in paragraph (a) of this clause, the Contracting Officer shall make an equitable adjustment in the contract price and shall modify the contract to the extent that the Contractor's actual costs of performing this contract are increased or decreased, as a direct result of the revision, subject to the following:

(1) For increases in established wage rates or material prices, the increase in contract unit price(s) shall be effective on the same date that the government named in paragraph (a) of this clause increased the applicable wage rate(s) or material price(s), but only if the Contracting Officer receives the Contractor's written request for contract adjustment within 10 days of the change. If the Contractor's request is received later, the effective date shall be the date that the Contracting Officer received the Contractor's request.

(2) For decreases in established wage rates or material prices, the decrease in contract unit price(s) shall be effective on the same date that the government named in paragraph (a) of this clause decreased the applicable wage rate(s) or material price(s). The decrease in contract unit price(s) shall apply to all items delivered on and after the effective date of the government's rate or price decrease.

(c) No modification changing the contract unit price(s) shall be executed until the Contracting Officer has verified the applicable change in the rates or prices set by the government named in paragraph (a) of this clause. The Contractor shall make available its books and records that support a requested change in contract price.

(d) Failure to agree to any adjustment shall be a dispute under the Disputes clause of this contract.

(End of clause)

[62 FR 34128, June 24, 1997]

252.217–7000 Exercise of option to fulfill foreign military sales commitments.

As prescribed in 217.208–70(a), use the following clause:

EXERCISE OF OPTION TO FULFILL FOREIGN MILITARY SALES COMMITMENTS (DEC. 1991)

(a) The Government may exercise the option(s) of this contract to fulfill foreign military sales commitments.

(b) The foreign military sales commitments are for:

_____

(Insert name of country, or To Be Determined)

_____

(Insert applicable CLIN)

(End of clause)

ALTERNATE I (DEC. 1991)

As prescribed in 217.208–70(a)(1), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) On the date the option is exercised, the Government shall identify the foreign country for the purpose of negotiating any equitable adjustment attributable to foreign military sales. Failure to agree on an equitable adjustment shall be treated as a dispute under the Disputes clause of this contract.

252.217–7001 Surge option.

As prescribed in 217.208–70(b), use the following clause:

SURGE OPTION (AUG. 1992)

(a) *General.* The Government has the option to—

(1) Increase the quantity of supplies or services called for under this contract by no more than _____ percent; and/or

(2) Accelerate the rate of delivery called for under this contract, at a price or cost established before contract award or to be established by negotiation as provided in this clause.

(b) *Schedule.* (1) When the Production Surge Plan (DI–MGMT–80969) is included in the contract, the option delivery schedule shall be the production rate provided with the Plan. If the Plan was negotiated before contract award, then the negotiated schedule shall be used.

(2) If there is no Production Surge Plan in the contract, the Contractor shall, within 30 days from the date of award, furnish the Contracting Officer a delivery schedule

showing the maximum sustainable rate of delivery for items in this contract. This delivery schedule shall provide acceleration by month up to the maximum sustainable rate of delivery achievable within the Contractor's existing facilities, equipment, and subcontracting structure.

(3) The Contractor shall not revise the option delivery schedule without approval from the Contracting Officer.

(c) *Exercise of option.* (1) The Contracting Officer may exercise this option at any time before acceptance by the Government of the final scheduled delivery.

(2) The Contracting Officer will provide a preliminary oral or written notice to the Contractor stating the quantities to be added or accelerated under the terms of this clause, followed by a contract modification incorporating the transmitted information and instructions. The notice and modification will establish a not-to-exceed price equal to the highest contract unit price or cost of the added or accelerated items as of the date of the notice.

(3) The Contractor will not be required to deliver at a rate greater than the maximum sustainable delivery rate under paragraph (b)(2) of this clause, nor will the exercise of this option extend delivery more than 24 months beyond the scheduled final delivery.

(d) *Price negotiation.* (1) Unless the option cost or price was previously agreed upon, the Contractor shall, within 30 days from the date of option exercise, submit to the Contracting Officer a cost or price proposal (including a cost breakdown) for the added or accelerated items.

(2) Failure to agree on a cost or price in negotiations resulting from the exercise of this option shall constitute a dispute concerning a question of fact within the meaning of the Disputes clause of this contract. However, nothing in this clause shall excuse the Contractor from proceeding with the performance of the contract, as modified, while any resulting claim is being settled.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 57 FR 42633, Sept. 15, 1992]

252.217–7002 Offering property for exchange.

As prescribed in 217.7005, use the following provision:

OFFERING PROPERTY FOR EXCHANGE (DEC. 1991)

(a) The property described in item number _____, is being offered in accordance with the exchange provisions of section 201(c) of the Federal Property and Administrative Services Act of 1949, 63 Stat. 384 (40 U.S.C. 481(c)).

(b) The property is located at (insert address). Offerors may inspect the property during the period (insert beginning and ending dates and insert hours during day).

(End of provision)

252.217–7003 Changes.

As prescribed in 217.7104(a), use the following clause:

CHANGES (DEC. 1991)

(a) The Contracting Officer may, at any time and without notice to the sureties, by written change order, make changes within the general scope of any job order issued under the Master Agreement in—

(1) Drawings, designs, plans, and specifications;

(2) Work itemized;

(3) Place of performance of the work;

(4) Time of commencement or completion of the work; and

(5) Any other requirement of the job order.

(b) If a change causes an increase or decrease in the cost of, or time required for, performance of the job order, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the price or date of completion, or both, and shall modify the job order in writing.

(1) Within ten days after the Contractor receives notification of the change, the Contractor shall submit to the Contracting Officer a request for price adjustment, together with a written estimate of the increased cost.

(2) The Contracting Officer may grant an extension of this period if the Contractor requests it within the ten day period.

(3) If the circumstances justify it, the Contracting Officer may accept and grant a request for equitable adjustment at any later time prior to final payment under the job order, except that the Contractor may not receive profit on a payment under a late request.

(c) If the Contractor includes in its claim the cost of property made obsolete or excess as a result of a change, the Contracting Officer shall have the right to prescribe the manner of disposition of that property.

(d) Failure to agree to any adjustment shall be a dispute within the meaning of the Disputes clause.

(e) Nothing in this clause shall excuse the Contractor from proceeding with the job order as changed.

(End of clause)

252.217–7004 Job orders and compensation.

As prescribed in 217.7104(a), use the following clause:

JOB ORDERS AND COMPENSATION (DEC. 1991)

(a) The Contracting Officer shall solicit bids or proposals and make award of job orders in accordance with FAR part 14 or 15, as applicable. The issuance of a job order signed by the Contracting Officer constitutes award. The job order shall incorporate the terms and conditions of the Master Agreement.

(b) Whenever the Contracting Officer determines that a vessel, its cargo or stores, would be endangered by delay, or whenever the Contracting Officer determines that military necessity requires that immediate work on a vessel is necessary, the Contracting Officer may issue a written order to perform that work and the Contractor hereby agrees to comply with that order and to perform work on such vessel within its capabilities.

(1) As soon as practicable after the issuance of the order, the Contracting Officer and the Contractor shall negotiate a price for the work and the Contracting Officer shall issue a job order covering the work.

(2) The Contractor shall, upon request, furnish the Contracting Officer with a breakdown of costs incurred by the Contractor and an estimate of costs expected to be incurred in the performance of the work. The Contractor shall maintain, and make available for inspection by the Contracting Officer or the Contracting Officer's representative, records supporting the cost of performing the work.

(3) Failure of the parties to agree upon the price of the work shall constitute a dispute within the meaning of the Disputes clause of the Master Agreement. In the meantime, the Contractor shall diligently proceed to perform the work ordered.

(c)(1) If the nature of any repairs is such that their extent and probable cost cannot be ascertained readily, the Contracting Officer may issue a job order (on a sealed bid or negotiated basis) to determine the nature and extent of required repairs.

(2) Upon determination by the Contracting Officer of what work is necessary, the Contractor, if requested by the Contracting Officer, shall negotiate prices for performance of that work. The prices agreed upon shall be set forth in a modification of the job order.

(3) Failure of the parties to agree upon the price shall constitute a dispute under the Disputes clause. In the meantime, the Contractor shall diligently proceed to perform the work ordered.

(End of clause)

252.217–7005 Inspection and manner of doing work.

As prescribed in 217.7104(a), use the following clause:

INSPECTION AND MANNER OF DOING WORK (JAN 1997)

(a) The Contractor shall perform work in accordance with the job order, any drawings and specifications made a part of the job order, and any change or modification issued under the Changes clause of the Master Agreement.

(b)(1) Except as provided in paragraph (b)(2) of this clause, and unless otherwise specifically provided in the job order, all operational practices of the Contractor and all workmanship, material, equipment, and articles used in the performance of work under the Master Agreement shall be in accordance with the best commercial marine practices and the rules and requirements of the American Bureau of Shipping, the U.S. Coast Guard, and the Institute of Electrical and Electronic Engineers, in effect at the time of Contractor's submission of bid (or acceptance of the job order, if negotiated).

(2) When Navy specifications are specified in the job order, the Contractor shall follow Navy standards of material and workmanship. The solicitation shall prescribe the Navy standard whenever applicable.

(c) The Government may inspect and test all material and workmanship at any time during the Contractor's performance of the work.

(1) If, prior to delivery, the Government finds any material or workmanship is defective or not in accordance with the job order, in addition to its rights under the Guarantees clause of the Master Agreement, the Government may reject the defective or nonconforming material or workmanship and require the Contractor to correct or replace it at the Contractor's expense.

(2) If the Contractor fails to proceed promptly with the replacement or correction of the material or workmanship, the Government may replace or correct the defective or nonconforming material or workmanship and charge the Contractor the excess costs incurred.

(3) As specified in the job order, the Contractor shall provide and maintain an inspection system acceptable to the Government.

(4) The Contractor shall maintain complete records of all inspection work and shall make them available to the Government during performance of the job order and for 90 days after the completion of all work required.

(d) The Contractor shall not permit any welder to work on a vessel unless the welder is, at the time of the work, qualified to the standards established by the U.S. Coast Guard, American Bureau of Shipping, or Department of the Navy for the type of welding being performed. Qualifications of a welder shall be as specified in the job order.

(e) The Contractor shall—

(1) Exercise reasonable care to protect the vessel from fire;

(2) Maintain a reasonable system of inspection over activities taking place in the vicinity of the vessel's magazines, fuel oil tanks, or storerooms containing flammable materials;

(3) Maintain a reasonable number of hose lines ready for immediate use on the vessel at all times while the vessel is berthed alongside the Contractor's pier or in dry dock or on a marine railway;

(4) Unless otherwise provided in a job order, provide sufficient security patrols to reasonably maintain a fire watch for protection of the vessel when it is in the Contractor's custody;

(5) To the extent necessary, clean, wash, and steam out or otherwise make safe, all tanks under alteration or repair;

(6) Furnish the Contracting Officer or designated representative with a copy of the ''gas-free'' or ''safe-for-hotwork'' certificate, provided by a Marine Chemist or Coast Guard authorized person in accordance with Occupational Safety and Health Administration regulations (29 CFR 1915.14) before any hot work is done on a tank;

(7) Treat the contents of any tank as Government property in accordance with the Government Property (Fixed-Price Contracts) clause; and

(8) Dispose of the contents of any tank only at the direction, or with the concurrence, of the Contracting Officer.

(f) Except as otherwise provided in the job order, when the vessel is in the custody of the Contractor or in dry dock or on a marine railway and the temperature is expected to go as low as 35 °F, the Contractor shall take all necessary steps to—

(1) Keep all hose pipe lines, fixtures, traps, tanks, and other receptacles on the vessel from freezing; and

(2) Protect the stern tube and propeller hubs from frost damage.

(g) The Contractor shall, whenever practicable—

(1) Perform the required work in a manner that will not interfere with the berthing and messing of Government personnel attached to the vessel; and

(2) Provide Government personnel attached to the vessel access to the vessel at all times.

(h) Government personnel attached to the vessel shall not interfere with the Contractor's work or workers.

(i)(1) The Government does not guarantee the correctness of the dimensions, sizes, and shapes set forth in any job order, sketches, drawings, plans, or specifications prepared or furnished by the Government, unless the job order requires that the Contractor perform the work prior to any opportunity to inspect.

(2) Except as stated in paragraph (i)(1) of this clause, and other than those parts furnished by the Government, the Contractor shall be responsible for the correctness of the dimensions, sizes, and shapes of parts furnished under this agreement.

(j) The Contractor shall at all times keep the site of the work on the vessel free from accumulation of waste material or rubbish caused by its employees or the work. At the completion of the work, unless the job order specifies otherwise, the Contractor shall remove all rubbish from the site of the work and leave the immediate vicinity of the work area ''broom clean.''

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 62 FR 2614, Jan. 17, 1997]

252.217–7006 Title.

As prescribed in 217.7104(a), use the following clause:

TITLE (DEC. 1991)

(a) Unless otherwise provided, title to all materials and equipment to be incorporated in a vessel in the performance of a job order shall vest in the Government upon delivery at the location specified for the performance of the work.

(b) Upon completion of the job order, or with the approval of the Contracting Officer during performance of the job order, all Contractor-furnished materials and equipment not incorporated in, or placed on, any vessel, shall become the property of the Contractor, unless the Government has reimbursed the Contractor for the cost of the materials and equipment.

(c) The vessel, its equipment, movable stores, cargo, or other ship's materials shall not be considered Government-furnished property.

(End of clause)

252.217–7007 Payments.

As prescribed in 217.7104(a), use the following clause:

PAYMENTS (DEC. 1991)

(a) *Progress payments,* as used in this clause, means payments made before completion of work in progress under a job order.

(b) Upon submission by the Contractor of invoices in the form and number of copies directed by the Contracting Officer, and as approved by the Contracting Officer, the Government will make progress payments as work progresses under the job order.

(1) Generally, the Contractor may submit invoices on a semi-monthly basis, unless expenditures justify a more frequent submission.

(2) The Government need not make progress payments for invoices aggregating less than $5,000.

(3) The Contracting Officer shall approve progress payments based on the value, computed on the price of the job order, of labor and materials incorporated in the work, materials suitably stored at the site of the work, and preparatory work completed, less the aggregate of any previous payments.

(4) Upon request, the Contractor will furnish the Contracting Officer any reports concerning expenditures on the work to date that the Contracting Officer may require.

(c) The Government will retain until final completion and acceptance of all work covered by the job order, an amount estimated or approved by the Contracting Officer under paragraph (b) of this clause. The amount retained will be in accordance with the rate authorized by Congress for Naval vessel repair contracts at the time of job order award.

(d) The Contracting Officer may direct that progress payments be based on the price of the job order as adjusted as a result of change orders under the Changes clause of the Master Agreement. If the Contracting Officer does not so direct—

(1) Payments of any increases shall be made from time to time after the amount of the increase is determined under the Changes clause of the Master Agreement; and

(2) Reductions resulting from decreases shall be made for the purposes of subsequent progress payments as soon as the amounts are determined under the Changes clause of the Master Agreement.

(e) Upon completion of the work under a job order and final inspection and acceptance, and upon submission of invoices in such form and with such copies as the Contracting Officer may prescribe, the Contractor shall be paid for the price of the job order, as adjusted pursuant to the Changes clause of the Master Agreement, less any performance reserves deemed necessary by the Contracting Officer, and less the amount of any previous payments.

(f) All materials, equipment, or any other property or work in process covered by the progress payments made by the Government, upon the making of those progress payments, shall become the sole property of the Government, and are subject to the provisions of the Title clause of the Master Agreement.

(End of clause)

252.217–7008 Bonds.

As prescribed in 217.7104(a), use the following clause:

BONDS (DEC. 1991)

(a) If the solicitation requires an offeror to submit a bid bond, the Offeror may furnish, instead, an annual bid bond (or evidence thereof) or an annual performance and payment bond (or evidence thereof).

(b) If the solicitation does not require a bid bond, the Offeror shall not include in the price any contingency to cover the premium of such a bond.

(c) Even if the solicitation does not require bonds, the Contracting Officer may nevertheless require a performance and payment bond, in form, amount, and with a surety acceptable to the Contracting Officer. Where performance and payment bond is required, the offer price shall be increased upon the award of the job order in an amount not to exceed the premium of a corporate surety bond.

(d) If any surety upon any bond furnished in connection with a job order under this agreement fails to submit requested reports as to its financial condition or otherwise becomes unacceptable to the Government, the Contracting Officer may require the Contractor to furnish whatever additional security the Contracting Officer determines necessary to protect the interests of the Government and of persons supplying labor or materials in the performance of the work contemplated under the Master Agreement.

(End of clause)

252.217–7009 Default.

As prescribed in 217.7104(a), use the following clause:

DEFAULT (DEC. 1991)

(a) The Government may, subject to the provisions of paragraph (b) of this clause, by written notice of default to the Contractor, terminate the whole or any part of a job order if the Contractor fails to—

(1) Make delivery of the supplies or to perform the services within the time specified in a job order or any extension;

(2) Make progress, so as to endanger performance of the job order; or

(3) Perform any of the other provisions of this agreement or a job order.

(b) Except for defaults of subcontractors, the Contractor shall not be liable for any excess costs if failure to perform the job order arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

(c) If the Contractor's failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to perform the job order within the time specified.

(d) If the Government terminates the job order in whole or in part as provided in paragraph (a) of this clause—

(1) The Government may, upon such terms and in such manner as the Contracting Officer may deem appropriate, arrange for the completion of the work so terminated, at such plant or plants, including that of the Contractor, as may be designated by the Contracting Officer.

(i) The Contractor shall continue the performance of the job order to the extent not terminated under the provisions of this clause.

(ii) If the work is to be completed at the plant, the Government may use all tools, machinery, facilities, and equipment of the Contractor determined by the Contracting Office to be necessary for that purpose.

(iii) If the cost to the Government of the work procured or completed (after adjusting such cost to exclude the effect of changes in the plans and specifications made subsequent to the date of termination) exceeds the price fixed for work under the job order (after adjusting such price on account of changes in the plans and specifications made before the date of termination), the Contractor, or the Contractor's surety, if any, shall be liable for such excess.

(2) The Government, in addition to any other rights provided in this clause, may require the Contractor to transfer title and delivery to the Government, in the manner and to the extent directed by the Contracting Officer, any completed supplies and such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (hereinafter called ''manufacturing materials'') as the Contractor has specifically produced or specifically acquired for the performance of the terminated part of the job order.

(i) The Contractor shall, upon direction of the Contracting Officer, protect and preserve property in possession of the Contractor in which the Government has an interest.

(ii) The Government shall pay to the Contractor the job order price for completed items of work delivered to and accepted by the Government, and the amount agreed upon by the Contractor and the Contracting Officer for manufacturing materials delivered to and accepted by the Government, and for the protection and preservation of property. Failure to agree shall be a dispute concerning a question of fact within the meaning of the Disputes clause.

(e) If, after notice of termination of the job order, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued for the convenience of the Government.

(f) If the Contractor fails to complete the performance of a job order within the time specified, or any extension, the actual damage to the Government for the delay will be difficult or impossible to determine.

(1) In lieu of actual damage, the Contractor shall pay to the Government as fixed, agreed, and liquidated damages for each calendar day of delay the amount, if any, set forth in the job order (prorated to the nearest hour for fractional days).

(2) If the Government terminates the job order, the Contractor shall be liable, in addition to the excess costs provided in paragraph (d) of this clause, for liquidated damages accruing until such time as the Government may reasonably obtain completion of the work.

(3) The Contractor shall not be charged with liquidated damages when the delay arises out of causes beyond the control and without the fault or negligence of the Contractor. Subject to the provisions of the Disputes clause of the Master Agreement, the Contracting Officer shall ascertain the facts and the extent of the delay and shall extend the time for performance when in the judgment of the Contracting Officer, the findings of fact justify an extension.

(g) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law under this agreement.

(End of clause)

252.217–7010 Performance.

As prescribed in 217.7104(a), use the following clause:

PERFORMANCE (DEC. 1991)

(a) Upon the award of a job order, the Contractor shall promptly start the work specified and shall diligently prosecute the work to completion. The Contractor shall not start work until the job order has been awarded except in the case of emergency work ordered by the Contracting Officer under the Job Orders and Compensation clause of the Master Agreement.

(b) The Government shall deliver the vessel described in the job order at the time and location specified in the job order. Upon completion of the work, the Government shall

accept delivery of the vessel at the time and location specified in the job order.

(c) The Contractor shall, without charge and without specific requirement in a job order,—

(1) Make available at the plant to personnel of the vessel while in dry dock or on a marine railway, sanitary lavatory and similar facilities acceptable to the Contracting Officer;

(2) Supply and maintain suitable brows and gangways from the pier, dry dock, or marine railway to the vessel;

(3) Treat salvage, scrap or other ship's material of the Government resulting from performance of the work as items of Government-furnished property, in accordance with the Government Property (Fixed Price Contracts) clause;

(4) Perform, or pay the cost of, any repair, reconditioning or replacement made necessary as the result of the use by the Contractor of any of the vessel's machinery, equipment or fittings, including, but not limited to, winches, pumps, rigging, or pipe lines; and

(5) Furnish suitable offices, office equipment and telephones at or near the site of the work for the Government's use.

(d) The job order will state whether dock and sea trials are required to determine whether or not the Contractor has satisfactorily performed the work.

(1) If dock and sea trials are required, the vessel shall be under the control of the vessel's commander and crew.

(2) The Contractor shall not conduct dock and sea trials not specified in the job order without advance approval of the Contracting Officer. Dock and sea trials not specified in the job order shall be at the Contractor's expense and risk.

(3) The Contractor shall provide and install all fittings and appliances necessary for dock and sea trials. The Contractor shall be responsible for care, installation, and removal of instruments and apparatus furnished by the Government for use in the trials.

(End of clause)

252.217–7011 Access to vessel.

As prescribed at 217.7104(a), use the following clause:

ACCESS TO VESSEL (DEC. 1991)

(a) Upon the request of the Contracting Officer, the Contractor shall grant admission to the Contractor's facilities and access to vessel, on a non-interference basis, as necessary to perform their respective responsibilities, to a reasonable number of:

(1) Government and other Government contractor employees (in addition to those Government employees attached to the vessel); and

(2) Representatives of offerors on other contemplated Government work.

(b) All personnel granted access shall comply with Contractor rules governing personnel at its shipyard.

(End of clause)

252.217–7012 Liability and insurance.

As prescribed in 217.7104(a), use the following clause:

LIABILITY AND INSURANCE (DEC. 1991)

(a) The Contractor shall exercise its best efforts to prevent accidents, injury, or damage to all employees, persons, and property, in and about the work, and to the vessel or part of the vessel upon which work is done.

(b) *Loss or damage to the vessel, materials, or equipment.* (1) Unless otherwise directed or approved in writing by the Contracting Officer, the Contractor shall not carry insurance against any form of loss or damage to the vessel(s) or to the materials or equipment to which the Government has title or which have been furnished by the Government for installation by the Contractor. The Government assumes the risks of loss of and damage to that property.

(2) The Government does not assume any risk with respect to loss or damage compensated for by insurance or otherwise or resulting from risks with respect to which the Contractor has failed to maintain insurance, if available, as required or approved by the Contracting Officer.

(3) The Government does not assume risk of and will not pay for any costs of the following:

(i) Inspection, repair, replacement, or renewal of any defects in the vessel(s) or material and equipment due to—

(A) Defective workmanship performed by the Contractor or its subcontractors;

(B) Defective materials or equipment furnished by the Contractor or its subcontracts; or

(C) Workmanship, materials, or equipment which do not conform to the requirements of the contract, whether or not the defect is latent or whether or not the nonconformance is the result of negligence.

(ii) Loss, damage, liability, or expense caused by, resulting from, or incurred as a consequence of any delay or disruption, willful misconduct or lack of good faith by the Contractor or any of its representatives that have supervision or direction of—

(A) All or substantially all of the Contractor's business; or

(B) All or substantially all of the Contractor's operation at any one plant.

(4) As to any risk that is assumed by the Government, the Government shall be subrogated to any claim, demand or cause of action against third parties that exists in favor

of the Contractor. If required by the Contracting Officer, the Contractor shall execute a formal assignment or transfer of the claim, demand, or cause of action.

(5) No party other than the Contractor shall have any right to proceed directly against the Government or join the Government as a co-defendant in any action.

(6) Notwithstanding the foregoing, the Contractor shall bear the first $5,000 of loss or damage from each occurrence or incident, the risk of which the Government would have assumed under the provisions of this paragraph (b).

(c) *Indemnification.* The Contractor indemnifies the Government and the vessel and its owners against all claims, demands, or causes of action to which the Government, the vessel or its owner(s) might be subject as a result of damage or injury (including death) to the property or person of anyone other than the Government or its employees, or the vessel or its owner, arising in whole or in part from the negligence or other wrongful act of the Contractor or its agents or employees, or any subcontractor, or its agents or employees.

(1) The Contractor's obligation to indemnify under this paragraph shall not exceed the sum of $300,000 as a consequence of any single occurrence with respect to any one vessel.

(2) The indemnity includes, without limitation, suits, actions, claims, costs, or demands of any kind, resulting from death, personal injury, or property damage occurring during the period of performance of work on the vessel or within 90 days after redelivery of the vessel. For any claim, etc., made after 90 days, the rights of the parties shall be as determined by other provisions of this agreement and by law. The indemnity does apply to death occurring after 90 days where the injury was received during the period covered by the indemnity.

(d) *Insurance.* (1) The Contractor shall, at its own expense, obtain and maintain the following insurance—

(i) Casualty, accident, and liability insurance, as approved by the Contracting Officer, insuring the performance of its obligations under paragraph (c) of this clause.

(ii) Workers Compensation Insurance (or its equivalent) covering the employees engaged on the work.

(2) The Contractor shall ensure that all subcontractors engaged on the work obtain and maintain the insurance required in paragraph (d)(1) of this clause.

(3) Upon request of the Contracting Officer, the Contractor shall provide evidence of the insurance required by paragraph (d) of this clause.

(e) The Contractor shall not make any allowance in the job order price for the inclusion of any premium expense or charge for any reserve made on account of self-insurance for coverage against any risk assumed by the Government under this clause.

(f) The Contractor shall give the Contracting Officer written notice as soon as practicable after the occurrence of a loss or damage for which the Government has assumed the risk.

(1) The notice shall contain full details of the loss or damage.

(2) If a claim or suit is later filed against the Contractor as a result of the event, the Contractor shall immediately deliver to the Government every demand, notice, summons, or other process received by the Contractor or its employees or representatives.

(3) The Contractor shall cooperate with the Government and, upon request, shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses, and in the conduct of suits. The Government shall reimburse the Contractor for expenses incurred in this effort, other than the cost of maintaining the Contractor's usual organization.

(4) The Contractor shall not, except at its own expense, voluntarily make any payment, assume any obligation, or incur any expense other than what would be imperative for the protection of the vessel(s) at the time of the event.

(g) In the event or loss of or damage to any vessel(s), material, or equipment which may result in a claim against the Government under the insurance provisions of this contract, the Contractor shall promptly notify the Contracting Officer of the loss or damage. The Contracting Officer may, without prejudice to any other right of the Government, either—

(1) Order the Contractor to proceed with replacement or repair, in which event the Contractor shall effect the replacement or repair;

(i) The Contractor shall submit to the Contracting Officer a request for reimbursement of the cost of the replacement or repair together with whatever supporting documentation the Contracting Officer may reasonably require, and shall identify the request as being submitted under the Insurance clause of the agreement.

(ii) If the Government determines that the risk of the loss or damage is within the scope of the risks assumed by the Government under this clause, the Government will reimburse the Contractor for the reasonable, allowable cost of the replacement or repair, plus a reasonable profit (if the work or replacement or repair was performed by the Contractor) less the deductible amount specified in paragraph (b) of this clause.

(iii) Payments by the Government to the Contractor under this clause are outside the scope of and shall not affect the pricing structure of the contract, and are additional to the compensation otherwise payable to the Contractor under this contract; or

(2) In the event the Contracting Officer decides that the loss or damage shall not be replaced or repaired, the Contracting Officer shall—

(i) Modify the contract appropriately, consistent with the reduced requirements reflected by the unreplaced or unrepaired loss or damage; or

(ii) Terminate the repair of any part or all of the vessel(s) under the Termination for Convenience of the Government clause of this agreement.

(End of clause)

252.217–7013 Guarantees.

As prescribed in 217.7104(a), use the following clause:

GUARANTEES (DEC. 1991)

(a) In the event any work performed or materials furnished by the contractor under the Master Agreement prove defective or deficient within 90 days from the date of redelivery of the vessel(s), the Contractor, as directed by the Contracting Officer and at its own expense, shall correct and repair the deficiency to the satisfaction of the Contracting Officer.

(b) If the Contractor or any subcontractor has a guarantee for work performed or materials furnished that exceeds the 90 day period, the Government shall be entitled to rely upon the longer guarantee until its expiration.

(c) With respect to any individual work item identified as incomplete at the time of redelivery of the vessel(s), the guarantee period shall run from the date the item is completed.

(d) If practicable, the Government shall give the Contractor an opportunity to correct the deficiency.

(1) If the Contracting Officer determines it is not practicable or is otherwise not advisable to return the vessel(s) to the Contractor, or the Contractor fails to proceed with the repairs promptly, the Contracting Officer may direct that the repairs be performed elsewhere, at the Contractor's expense.

(2) If correction and repairs are performed by other than the Contractor, the Contracting Officer may discharge the Contractor's liability by making an equitable deduction in the price of the job order.

(e) The Contractor's liability shall extend for an additional 90 day guarantee period on those defects or deficiencies that the Contractor corrected.

(f) At the option of the Contracting Officer, defects and deficiencies may be left uncorrected. In that event, the Contractor and Contracting Officer shall negotiate an equitable reduction in the job price. Failure to agree upon an equitable reduction shall constitute a dispute under the Disputes clause of this agreement.

(End of clause)

252.217–7014 Discharge of liens.

As prescribed in 217.7104(a), use the following clause:

DISCHARGE OF LIENS (DEC. 1991)

(a) The Contractor shall immediately discharge, or cause to be discharged, any lien or right *in rem* of any kind, other than in favor of the Government, that exists or arises in connection with work done or material furnished under any job order under this agreement.

(b) If any lien or right *in rem* is not immediately discharged, the Government, at the expense of the Contractor, may discharge, or cause to be discharged, the lien or right.

(End of clause)

252.217–7015 Safety and health.

As prescribed in 217.7104(a), use the following clause:

SAFETY AND HEALTH (DEC. 1991)

Nothing contained in the Master Agreement or any job order shall relieve the Contractor of any obligations it may have to comply with—

(a) The Occupational Safety and Health Act of 1970 (29 U.S.C. 651, *et seq.*);

(b) The Safety and Health Regulations for Ship Repairing (29 CFR part 1915); or

(c) Any other applicable Federal, State, and local laws, codes, ordinances, and regulations.

(End of clause)

252.217–7016 Plant protection.

As prescribed in 217.7104(a), use the following clause:

PLANT PROTECTION (DEC. 1991)

(a) The Contractor shall provide, for the plant and work in process, reasonable safeguards against all hazards, including unauthorized entry, malicious mischief, theft, vandalism, and fire.

(b) The Contractor shall also provide whatever additional safeguards are necessary to protect the plant and work in process from espionage, sabotage, and enemy action.

(1) The Government shall reimburse the Contractor for that portion of the costs of the additional safeguards that is allocable to the contract in the same manner as if the Contracting Officer had issued a change order for the additional safeguards.

(2) The costs reimbursed shall not include any overhead allowance, unless the overhead is incident to the construction or installation of necessary security devices or equipment.

(c) Upon payment by the Government of the cost of any device or equipment required or approved under paragraph (b) of this clause, title shall vest in the Government.

(1) The Contractor shall comply with the instructions of the Contracting Officer concerning its identification and disposition.

(2) No such device or equipment shall become a fixture as a result of its being affixed to realty not owned by the Government.

(End of clause)

252.217–7017 Time of delivery.

As prescribed in 217.7203(a)(1), use the following clause:

TIME OF DELIVERY (DEC. 1991)

(a) Ordering offices shall specify delivery locations and quantities in all oral or written delivery orders under this contract.

(b) The Contractor shall complete deliveries within the hours prescribed in the schedule of this contract and on the days specified by the order.

(c) Orders requiring delivery within 24 hours from Contractor receipt are governed by paragraph (e) of the Requirements clause of this contract.

(End of clause)

ALTERNATE I (DEC. 1991)

As prescribed in 217.7203(a)(1), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The Contractor shall not be required to deliver within less than _____ hours from the time the Contractor receives a delivery order.

252.217–7018 Change in plant location—bakery and dairy products.

As prescribed in 217.7203(a)(2), use the following clause:

CHANGE IN PLANT LOCATION—BAKERY AND DAIRY PRODUCTS (DEC. 1991)

(a) The Offeror shall identify in the clause in this solicitation entitled Place of Performance, all plants to be used for manufacturing, processing, and shipment. Failure to furnish this information with the offer may result in rejection of the offer.

(b) The Offeror shall not change any place of performance between the date set for receipt of offers and the award, except where time permits and then only after receipt of the Contracting Officer's written approval.

(c) The Contractor shall not change any place of performance after contract award without advance approval by the Contracting Officer.

(End of clause)

252.217–7019 Sanitary conditions.

As prescribed in 217.7203(a)(3), use the following clause:

SANITARY CONDITIONS (DEC. 1991)

(a) The Contractor shall ensure that all supplies delivered under this contract, and all plant facilities, machinery, equipment, and apparatus used in the production, processing, handling, storage, or delivery of these supplies, meet the sanitary standards (including bacteriological requirements) prescribed by the specifications cited in this contract.

(b) The Government reserves the right to inspect and test at any reasonable times all plant facilities, machinery, equipment, and parts used in the production, processing, handling, storage, transportation, or delivery of supplies under this contract.

(c) The Contracting Officer or representative shall notify the Contractor in writing of any failure to meet the sanitary standards (including bacteriological requirements) prescribed by this contract. If the Contractor does not correct the failure within three days from receipt of notice, the Contracting Officer may—

(1) Terminate for default all or part of this contract; or

(2) Suspend work (wholly or partially) under the contract for ten days or any longer period considered necessary to allow correction of the failure.

(d) The suspension does not extend the life of this contract and shall not be considered sufficient reason for extending the delivery time.

(e) During the suspension period, the Government reserves the right to acquire similar supplies from other sources, on whatever terms and in whatever manner the Contracting Officer considers appropriate. The Contractor shall be liable to the Government for any excess costs for those similar supplies.

(f) If the Contractor does not correct the failure within the suspension period, the Contracting Officer may terminate for default the unexpired portion of this contract without allowing additional time for correction, notwithstanding paragraph (a)(2) of the Default (Fixed-Price Supply and Service) clause of this contract.

(End of clause)

ALTERNATE I (DEC. 1991)

As prescribed in 217.7203(a)(3), add the following to paragraph (d) of the basic clause:

In a suspension, the quantity of supplies designated in the schedule as a minimum shall be reduced by an amount proportionate to the ratio between (1) the number of days the work is suspended; and (2) the number of days in the contract period. The quantity of supplies designated as maximum shall not be reduced.

252.217–7020 Examination and testing.

As prescribed in 217.7203(b)(1), use the following clause:

EXAMINATION AND TESTING (DEC. 1991)

(a) The Government reserves the right to examine and test all products to be delivered under the contract. Examination and testing of dairy products shall be in accordance with the Veterinary/Medical Wholesomeness Assurance Program for Fresh and Cultured Dairy Products and Frozen Desserts (AR 40–70; NAVSUPINST 4355.6; AFR 161–46; and MCO 10110.44).

(b) *Samples.* (1) The Government shall select the samples. For purposes of this clause, the Contractor agrees that a lot consists of a day's production of the type of product delivered, or intended to be delivered, under this contract.

(2) Samples selected at origin shall be furnished at the Contractor's expense, and shall be considered representative of all the products delivered to the Government from the lot sampled.

(3) Samples selected at destination shall be furnished at Government expense, and shall be considered representative of all of that type product delivered to the Government on the date sampled.

(4) When samples are selected from containers of 1/2 gallon size or smaller, the entire contents of the container shall constitute the sample. When samples are selected from containers larger than 1/2 gallon, a 1/2 pint sample shall be taken for laboratory analysis.

(c) *Deficiencies in amounts.* The Contractor shall reimburse the Government for deficiencies (i.e., amounts less than required in this contract) in the amount of butterfat, milk solids non-fat, or total solids of any type of product as determined by chemical analysis. The amount of the reimbursement shall be determined in accordance with the Deficiency Adjustment clause of this contract. The Government shall not reimburse the Contractor for butterfat, milk solids non-fat, and total solids content in excess of the amount required by this contract.

(d) *Deficiencies in products.* (1) The Contracting Officer or representative shall notify the Contractor orally (with written confirmation) or in writing when two of the last four consecutive lots tested are nonconforming for the same specification requirements. The notice shall be in effect as long as two of the last four consecutive lots tested exceed the same limit of the specification. The Government will take additional samples between 3 and 14 days after the date of the notice.

(2) The Contracting Officer may suspend work under this contract for up to ten days when three out of the last five consecutive lots tested are nonconforming for the same specification requirement, or when any deficiency causes the production of a product which is considered to be a health hazard.

(e) *Suspension.* (1) During the suspension period, the Government reserves the right to acquire similar supplies from other sources, on whatever terms and in whatever manner the Contracting Officer considers appropriate. The Contractor shall be liable to the Government for any excess costs for those similar supplies.

(2) The Contractor shall use the suspension period to correct the deficiencies. The Contractor shall notify the Government when corrective action is complete.

(3) The Contracting Officer shall lift the suspension only after the Government has verified the corrective action and notified the Contractor in writing.

(4) The suspension does not extend the life of this contract and shall not be considered sufficient reason for extending the delivery time.

(5) If the Contractor does not correct the failure within the suspension period, the Contracting Officer may terminate for default the unexpired portion of this contract without allowing additional time for correction, notwithstanding paragraph (a)(2) of the Default (Fixed-Price Supply and Service) clause of this contract.

(End of clause)

ALTERNATE I (DEC. 1991)

As prescribed in 217.7203(b)(1), add the following to paragraph (d)(2) of the basic clause:

In a suspension, the quantity of supplies designated in the schedule as minimum shall be reduced by an amount proportionate to the ratio between (i) the number of days the work is suspended; and (ii) the number of days in the contract period. The quantity of supplies designated as maximum shall not be reduced.

252.217–7021 Deficiency adjustment.

As prescribed in 217.7203(b)(2), use the following clause:

DEFICIENCY ADJUSTMENT (DEC. 1991)

(a) When the Contractor is required under the Examination and Testing clause of the contract to reimburse the Government for deficiencies in the amount of butterfat, milk solids non-fat, or total solids, reimbursement

shall be determined by the following formula—

(1) *Butterfat.* Subtract the total pounds of butterfat delivered from the total pounds of butterfat required to be delivered, and multiply the remainder by the butterfat value. The butterfat value is 1.30 multiplied by the average Central States top ''Wholesale Selling Price'' of Grade A, 92 score butter during the monthly period for which the deficiency is computed, as reported in the Dairy Market News, published by the Department of Agriculture, Agricultural Marketing Service, Madison, Wisconsin.

(2) *Milk solids nonfat.* Subtract the total pounds of milk solids non-fat delivered from the total pounds of milk solids non-fat required to be delivered, and multiply the remainder by the milk solids non-fat value. The milk solids non-fat value is 1.45 multiplied by the average Central States top price for ''Extra Grade, Non-fat Dry Milk, Spray (bags)'' during the monthly period for which the deficiency is computed, as reported in the Dairy Market News.

(3) *Total solids.* Add to the total solids delivered the total amount of any shortages for butterfat and milk solids non-fat that the Contractor has already reimbursed. Subtract this amount from the total solids required to be delivered. Multiply the remainder by the milk solids non-fat value.

(b) The Government will not assess amounts totaling $25 or less during a monthly accounting period. Monthly periods begin on the first day of the contract period and on the same day of each succeeding month.

(c) The butterfat, milk solids non-fat, and total solids content of one type of product shall not be averaged with or offset against the content of another type of product, and the content of products delivered in any one monthly period will not be averaged with or offset against the content of products delivered in any other monthly period.

(d) The Contractor shall identify the tare weights of all containers on the shipping documents, and furnish a copy to the Government inspector at destination. The tare weight of dispenser containers shall include all parts of the container delivered as a unit, including lids, tubes, and seals. If different types of containers with different tares are included in a single delivery, the Contractor shall furnish the tare weight and identifying characteristics of each type of container.

(e) The Government shall inspect a representative sample of the line item. If volume and net weight shortages are found, the Government will adjust the entire quantity of the line item delivered on the day the shortage is discovered. For the purpose of determining net weight, the following weight factors apply:

Product	Weight factor
Chocolate flavored milk or drink.	8.8 pounds/gallon.
Milk whole fresh, buttermilk fluid, milk whole fresh. cultured, and milk skim fresh.	8.6 pounds/gallon.
Fresh cream (18 percent butterfat or less), half-and-half fresh, and cream sour cultured.	8.5 pounds/gallon.
Fresh cream (more than 18 percent butterfat).	8.4 pounds/gallon.
Cottage cheese, butter, and other non-frozen products.	Weight on container.
Ice cream and frozen desserts.	Applicable commodity specification.

(f) Contractor reimbursement for deficient supplies does not prejudice the Government's right to terminate for default or to pursue any other remedy under this contract or as provided by law.

(End of clause)

252.217–7022 Code dating.

As prescribed in 217.7203(a)(4), use the following clause:

CODE DATING (DEC. 1991)

(a) The Contractor may use a code to comply with the requirement stated in the schedule or specifications of this contract for showing a date on the labels of delivered items.

(b) Before using a code, the Contractor shall—

(1) Provide a written explanation to the Contracting Officer; and

(2) Obtain the Contracting Officer's approval in writing.

(c) The Contractor shall also obtain the Contracting Officer's written approval before making any changes in the code symbols, system, or explanation.

(End of clause)

252.217–7023 Marking.

As prescribed in 217.7203(a)(5), use the following clause:

MARKING (DEC. 1991)

Commercial markings are acceptable, notwithstanding any specification references to MIL–STD–129.

(End of clause)

252.217–7024 Responsibility for containers and equipment.

As prescribed in 217.7203(a)(6), use the following clause:

RESPONSIBILITY FOR CONTAINERS AND EQUIPMENT (DEC. 1991)

(a) The Contractor shall—

(1) Maintain all reusable containers and equipment in a sanitary condition and in a good state of repair and working order; and

(2) Remove all empty, reusable containers from Government premises at the time of each delivery, unless the Contracting Officer grants permission in writing for less frequent removal.

(b) The Government shall not be liable for any damage to, or loss or destruction of, containers and equipment furnished by the Contractor.

(End of clause)

252.217–7025 Containers and equipment.

As prescribed in 217.7203(b)(3), use the following clause:

CONTAINERS AND EQUIPMENT (DEC. 1991)

(a) The Contractor shall ensure that dispenser containers and filling equipment used in the performance of this contract, and any Contractor-furnished refrigerated bulk milk dispenser cabinets, comply with MIL–STD–175, Minimum Sanitary Standards for the Equipment and Methods for Handling of Milk and Milk Products in Bulk Milk Dispensing Operations.

(b) The Contractor shall install, service, and maintain any Contractor-furnished bulk milk dispenser cabinets to the Contracting Officer's satisfaction. The Contractor has sole responsibility for the supply, installation, maintenance, and removal of the cabinets, including labor and material costs, and for any damage to, or loss or destruction of, such cabinets.

(c) When the Contractor fails to furnish milk dispenser cabinets or milk dispenser containers as required in the schedule, or does not properly service, maintain, and repair such dispenser cabinets, so that milk cannot be dispensed as needed by the Government, the Contractor shall, for as long as such conditions exist, deliver a sufficient quantity of milk in half-pint containers to satisfy orders for milk dispenser containers. The price per gallon for milk dispenser containers shall apply.

(d) When any loss of contents of a dispenser container occurs (including loss due to contamination, spoilage, or leakage) as a result of functional failure of the dispenser cabinet or dispenser containers, the Contractor shall immediately replace the lost contents without cost to the Government, unless such functional failure was due to a general power failure at the Government installation.

(End of clause)

252.217–7026 Identification of sources of supply.

As prescribed in 217.7303, use the following provision:

IDENTIFICATION OF SOURCES OF SUPPLY (NOV 1995)

(a) The Government is required under 10 U.S.C. 2384 to obtain certain information on the actual manufacturer or sources of supplies it acquires.

(b) The apparently successful Offeror agrees to complete and submit the following table before award:

TABLE

Line items	National stock No.	Commercial item (Y or N)	Source of supply			Actual mfg?
			Company	Address	Part No.	
(1)	(2)	(3)	(4)	(4)	(5)	(6)
_____	_____	_____	_____	_____	_____	_____

(1) List each deliverable item of supply and item of technical data.
(2) If there is no national stock number, list ''none.''
(3) Use ''Y'' if the item is a commercial item; otherwise use ''N.'' If ''Y'' is listed, the Offeror need not complete the remaining columns in the table.
(4) For items of supply, list all sources. For technical data, list the source.
(5) For items of supply, list each source's part number for the item.
(6) Use ''Y'' if the source of supply is the actual manufacturer; ''N'' if it is not; and ''U'' if unknown.

(End of provision)

[56 FR 36479, July 31, 1991, as amended at 59 FR 27675, May 27, 1994; 60 FR 61601, Nov. 30, 1995]

252.217–7027 Contract definitization.

As prescribed in 217.7406(b), use the following clause:

CONTRACT DEFINITIZATION (FEB 1996)

(a) A _____*(insert specific type of contract action)* is contemplated. The Contractor agrees to begin promptly negotiating with the Contracting Officer the terms of a definitive contract that will include (1) all clauses required by the Federal Acquisition Regulation (FAR) on the date of execution of the underfinitized contract action, (2) all clauses required by law on the date of execution of the definitive contract action, and (3) any other mutually agreeable clauses, terms, and conditions. The Contractor agrees to submit a _____*(insert type of proposal; e.g., fixed-price or cost-and-fee)* proposal and cost or pricing data supporting its proposal.

(b) The schedule for definitizing this contract is as follows (*insert target date for definitization of the contract action and dates for submission of proposal, beginning of negotiations, and, if appropriate, submission of the make-or-buy and subcontracting plans and cost or pricing data).*

_____

_____

_____

_____

(c) If agreement on a definitive contract action to supersede this undefinitized contract action is not reached by the target date in paragraph (b) of this clause, or within any extension of it granted by the Contracting Officer, the Contracting Officer may, with the approval of the head of the contracting activity, determine a reasonable price or fee in accordance with subpart 15.8 and part 31 of the FAR, subject to Contractor appeal as provided in the Disputes clause. In any event, the Contractor shall proceed with completion of the contract, subject only to the Limitation of Government Liability clause.

(1) After the Contracting Officer's determination of price or fee, the contract shall be governed by—

(i) All clauses required by the FAR on the date of execution of this underfinitized contract action for either fixed-price or cost-reimbursement contracts, as determined by the Contracting Officer under this paragraph (c);

(ii) All clauses required by law as of the date of the Contracting Officer's determination; and

(iii) Any other clauses, terms, and conditions mutually agreed upon.

(2) To the extent consistent with paragraph (c)(1) of this clause, all clauses, terms, and conditions included in this undefinitized contract action shall continue in effect, except those that by their nature apply only to an undefinitized contract action.

(d) The definitive contract resulting from this undefinitized contract action will include a negotiated _____ *(insert ''cost/price ceiling'' or ''firm-fixed price'')* in no event to exceed _____ *(insert the not-to-exceed amount).*

(End of clause)

[61 FR 7750, Feb. 29, 1996; 61 FR 18195, Apr. 24, 1996]

252.217–7028 Over and above work.

As prescribed in 217.7702, use a clause substantially as follows:

OVER AND ABOVE WORK (DEC. 1991)

(a) *Definitions.*

As used in this clause—

(1) *Over and above work* means work discovered during the course of performing overhaul, maintenance, and repair efforts that is—

(i) Within the general scope of the contract;

(ii) Not covered by the line item(s) for the basic work under the contract; and

(iii) Necessary in order to satisfactorily complete the contract.

(2) *Work request* means a document prepared by the Contractor which describes over and above work being proposed.

(b) The Contractor and Administrative Contracting Officer shall mutually agree to procedures for Government administration and Contractor performance of over and above work requests. If the parties cannot agree upon the procedures, the Administrative Contracting Officer has the unilateral right to direct the over and above work procedures to be followed. These procedures shall, as a minimum, cover—

(1) The format, content, and submission of work requests by the Contractor. Work requests shall contain data on the type of discrepancy disclosed, the specific location of the discrepancy, and the estimated labor hours and material required to correct the discrepancy. Data shall be sufficient to satisfy contract requirements and obtain the authorization of the Contracting Officer to perform the proposed work;

(2) Government review, verification, and authorization of the work; and

(3) Proposal pricing, submission, negotiation, and definitization.

(c) Upon discovery of the need for over and above work, the Contractor shall prepare and

furnish to the Government a work request in accordance with the agreed-to procedures.

(d) The Government shall—

(1) Promptly review the work request;

(2) Verify that the proposed work is required and not covered under the basic contract line item(s);

(3) Verify that the proposed corrective action is appropriate; and

(4) Authorize over and above work as necessary.

(e) The Contractor shall promptly submit to the Contracting Officer, a proposal for the over and above work. The Government and Contractor will then negotiate a settlement for the over and above work. Contract modifications will be executed to definitize all over and above work.

(f) Failure to agree on the price of over and above work shall be a dispute within the meaning of the Disputes clause of this contract.

(End of clause)

252.219–7000 Small disadvantaged business concern representation (DoD contracts).

As prescribed in 219.304(b), use the following provision:

SMALL DISADVANTAGED BUSINESS CONCERN REPRESENTATION (DOD CONTRACTS) (JUNE 1997)

(a) *Definition. Small disadvantaged business concern,* as used in this provision, means a small business concern, owned and controlled by individuals who are both socially and economically disadvantaged, as defined by the Small Business Administration at 13 CFR part 124, the majority of earnings of which directly accrue to such individuals. This term also means a small business concern owned and controlled by an economically disadvantaged Indian tribe or Native Hawaiian organization which meets the requirements of 13 CFR 124.112 or 13 CFR 124.113, respectively. In general, 13 CFR part 124 describes a small disadvantaged business concern as a small business concern—

(1) Which is at least 51 percent unconditionally owned by one or more socially and economically disadvantaged individuals; or

(2) In the case of any publicly owned business, at least 51 percent of the voting stock is unconditionally owned by one or more socially and economically disadvantaged individuals; and

(3) Whose management and daily business operations are controlled by one or more such individuals.

(b) *Representations.* Check the category in which your ownership falls—

—Subcontinent Asian (Asian-Indian) American (U.S. citizen with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal)

—Asian-Pacific American (U.S. citizen with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, U.S. Trust Territory of the Pacific Islands (Republic of Palau), the Northern Mariana Islands, Laos, Kampuchea (Cambodia), Taiwan, Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Republic of the Marshall Islands, the Federated States of Micronesia, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru)

_____ Black American (U.S. citizen)

_____ Hispanic American (U.S. citizen with origins from South America, Central America, Mexico, Cuba, the Dominican Republic, Puerto Rico, Spain, or Portugal)

_____ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians, including Indian tribes or Native Hawaiian organizations)

_____ Individual/concern, other than one of the preceding, currently certified for participation in the Minority Small Business and Capital Ownership Development Program under section 8(a) of the Small Business Act

_____ Other

(c) Complete the following—

(1) The offeror is ___ is not ___ a small disadvantaged business concern.

(2) The Small Business Administration (SBA) has ___ has not ___ made a determination concerning the offeror's status as a small disadvantaged business concern. If the SBA has made a determination, the date of the determination was ___ and the offeror—

_____ Was found by SBA to be socially and economically disadvantaged and no circumstances have changed to vary that determination.

_____ Was found by SBA not to be socially and economically disadvantaged but circumstances which caused the determination have changed.

(d) *Penalties and remedies.* Anyone who misrepresents the status of a concern as a small disadvantaged business for the purpose of securing a contract or subcontract shall—

(1) Be punished by imposition of a fine, imprisonment, or both;

(2) Be subject to administrative remedies, including suspension and debarment; and

(3) Be ineligible for participation in programs conducted under authority of the Small Business Act.

(End of provision)

[56 FR 36479, July 31, 1991, as amended at 59 FR 22131, Apr. 29, 1994; 62 FR 2614, Jan. 17, 1997; 62 FR 34128, June 24, 1997]

252.219–7001 Notice of partial small business set-aside with preferential consideration for small disadvantaged business concerns.

As prescribed in 219.508(d), use the following clause:

NOTICE OF PARTIAL SMALL BUSINESS SET-ASIDE WITH PREFERENTIAL CONSIDERATION FOR SMALL DISADVANTAGED BUSINESS CONCERNS (MAY 1995)

(a) *Definitions.*

Labor surplus area, as used in this clause, means a geographical area identified by the Department of Labor as an area of labor surplus.

Labor surplus area concern, as used in this clause, means a concern that, together with its first tier subcontractors, will perform substantially in labor surplus areas.

Perform substantially in labor surplus areas, as used in this clause, means that the costs incurred under the contract on account of manufacturing, production, and performance of services in labor surplus areas exceed 50 percent of the contract price.

Small business concern, as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.

Small disadvantaged business concern, as used in this clause, means a small business concern, owned and controlled by individuals who are both socially and economically disadvantaged, as defined by the Small Business Administration at 13 CFR part 124, the majority of earnings of which directly accrue to such individuals. This term also means a small business concern owned and controlled by an economically disadvantaged Indian tribe or Native Hawaiian organization which meets the requirements of 13 CFR 124.112 or 13 CFR 124.113, respectively.

United States, as used in this clause, means the United States, its territories and possessions, the Commonwealth of Puerto Rico, the U.S. Trust Territory of the Pacific Islands, or the District of Columbia.

(b) *General.* A portion of this requirement, identified elsewhere in this solicitation, has been set-aside for award to one or more small business concerns. After offers for the non-set-aside portion have been evaluated, negotiations will be conducted for the set-aside portion.

(1) Offers on the non-set-aside portion will be evaluated and award made in accordance with the other provisions of this solicitation.

(2) The set-aside portion will be negotiated, in accordance with this clause, with small business concerns which submitted offers on the non-set-aside portion.

(c) *Award of the set-aside portion.* (1) Small business offerors on the non-set-aside portion will be selected for negotiation of the set-aside portion based on their standing—first in terms of group and then in terms of lowest responsive offer on the non-set-aside portion.

(i) Group 1—Small disadvantaged business concerns which are also labor surplus area concerns.

(ii) Group 2—Small business concerns which are also labor surplus area concerns.

(iii) Group 3—Other small disadvantaged business concerns.

(iv) Group 4—Other small business concerns.

(2) The set-aside portion will be awarded at the highest unit price(s) in the contract(s) for the non-set-aside portion, adjusted to reflect transportation and other costs appropriate for the selected contractor(s), except—

(i) Award of the set-aside portion to a small disadvantaged business concern will be at the lower of—

(A) The price offered by the concern on the non-set-aside portion; or

(B) A price that does not exceed the award price on the non-set-aside portion by more than ten percent.

(ii) When award under the set-aside portion is to a concern offering a nonqualifying country end product and the highest unit price in the contract(s) is for a domestic or qualifying country end product, the set-aside price will be the higher of—

(A) The highest award price for a nonqualifying country end product under the nonset-aside; or

(B) A price which, when adjusted by the Buy American Act evaluation factor, would equal the highest unit price in the contract(s).

(iii) When award under the set-aside portion is to a concern offering a domestic end product and the highest unit price in the contract(s) is for a nonqualifying country end product which was evaluated using the Buy American Act evaluation factor, the set-aside price will be awarded at the evaluated price of the non-qualifying country.

(iv) When award under the set-aside portion is to a concern offering a domestic end product and the highest unit price in the contract(s) is for a nonqualifying country end product which was evaluated without the Buy American Act factor—

(A) And award was made to a domestic or qualifying country offer at a price lower than the high contract price, the set-aside price will be the highest unit price in the contract(s).

(B) And award was not made to a domestic or qualifying country offer at a price lower than the high contract price, the set-aside price will be the lower of—

(*1*) The highest unit price under the contract(s) as adjusted by the Buy American Act evaluation factor; or

(*2*) The lowest offered price for a domestic or qualifying country end product which was not awarded under the nonset-aside.

(v) Where the Trade Agreements Act applies to the nonset-aside portion, offers of eligible products will be treated as if they were qualifying country end products.

(vi) Discount terms used in evaluation of the highest non-set-aside award price will apply to the set-aside award price.

(3) If negotiations are not successful for any part of the set-aside portion, the set-aside will be dissolved for that part and the requirement will be resolicited.

(d) *Token offers.* The Government reserves the right to not consider token offers or offers designed to secure an unfair advantage over other offerors eligible for the set-aside portion.

(e) *Eligibility for preference as a labor surplus area concern.* Small business or small disadvantaged business offerors which claim preference for the set-aside portion as a labor surplus area concern, must list the labor surplus area location(s) of offeror or first tier subcontractors, which account for more than 50 percent of the contract price.

Name of Company:
Street Address:
City/County:
State:

(f) *Agreements.*

(1) If awarded a contract as a small disadvantaged business-labor surplus area concern or as a small business-labor surplus area concern, the offeror—

(i) Will perform the contract, or cause it to be performed, substantially in areas classified as labor surplus areas.

(ii) If the contract is in excess of $25,000, will submit a report to the Contracting Officer within 30 days after award that contains the following information—

(A) The dollar amount of the contract.

(B) Identification of each labor surplus area in which contract and subcontract performance is taking or will take place.

(C) The total costs incurred and to be incurred under the contract in each of the labor surplus areas by the contractor and first tier subcontractors.

(D) The total dollar amount attributable to performance in labor surplus areas.

(2) A manufacturer or regular dealer, which claims preference as a small disadvantaged business and submits an offer in its own name, agrees to furnish in performing this contract only end items manufactured or produced by small disadvantaged business concerns in the United States, except, as provided in section 8051 of Pub. L. 103–139 and section 8012 of Pub. L. 103–335, for contracts awarded during fiscal years 1994 and 1995, a small disadvantaged business manufacturer or regular dealer owned by an Indian tribe, including an Alaska Native Corporation, agrees to furnish only end items manufactured or produced by small business concerns in the United States.

(End of clause)

ALTERNATE I (MAY 1994)

As prescribed in 219.508(d), substitute the following paragraph (f)(2) for paragraph (f)(2) of the basic clause:

(f)(2) A regular dealer, which claims preference as a small disadvantaged business and submits an offer in its own name, agrees to furnish in performing this contract only end items manufactured or produced by small business concerns in the United States.

[56 FR 36479, July 31, 1991, as amended at 59 FR 24959, May 13, 1994; 60 FR 29502, June 5, 1995]

252.219–7002 Notice of small disadvantaged business set-aside.

As prescribed in 219.508–70, use the following clause:

NOTICE OF SMALL DISADVANTAGED BUSINESS SET-ASIDE (MAY 1995)

(a) *Definitions.*

Small disadvantaged business concern, as used in this clause, means a small business concern, owned and controlled by individuals who are both socially and economically disadvantaged, as defined by the Small Business Administration at 13 CFR part 124, the majority of earnings of which directly accrue to such individuals. This term also means a small business concern owned and controlled by an economically disadvantaged Indian tribe or Native Hawaiian organization which meets the requirements of 13 CFR 124.112 or 13 CFR 124.113, respectively.

United States, as used in this clause, means the United States, its territories and possessions, the Commonwealth of Puerto Rico, the U.S. Trust Territory of the Pacific Islands, or the District of Columbia.

(b) *General.* Offers are solicited only from small disadvantaged business concerns. Offers received from concerns that are not small disadvantaged businesses are nonresponsive and will be rejected.

(c) *Agreement.* A small disadvantaged business manufacturer or regular dealer, submitting an offer in its own name, agrees to furnish in performing this contract only end items manufactured or produced by small disadvantaged business concerns in the United States, except, as provided in section 8051 of Pub. L. 103–139 and section 8012 of Pub. L. 103–335, for contracts awarded during fiscal years 1994 and 1995, a small disadvantaged business manufacturer or regular dealer

owned by an Indian tribe, including an Alaska Native Corporation, agrees to furnish only end items manufactured or produced by small business concerns in the United States.

(End of clause)

ALTERNATE I (MAY 1994)

As prescribed in 219.508–70, substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) *Agreement.* A small disadvantaged business regular dealer submitting an offer in its own name agrees to furnish in performing this contract only end items manufactured or produced by small business concerns in the United States.

[56 FR 36479, July 31, 1991, as amended at 59 FR 24959, May 13, 1994; 60 FR 29502, June 5, 1995]

EFFECTIVE DATE NOTE: At 60 FR 54955, Oct. 27, 1995, §252.219–7002 was suspended indefinately.

252.219–7003 Small, small disadvantaged and women-owned small business subcontracting plan (DoD contracts).

As prescribed in 219.708(b)(1)(A), use the following clause:

SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (DOD CONTRACTS) (APR 1996)

This clause supplements the Federal Acquisition Regulation 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, clause of this contract.

(a) *Definitions. Historically black colleges and universities,* as used in this clause, means institutions determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. The term also means any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

Minority institutions, as used in this clause, means institutions meeting the requirements of section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d–5(3)). The term also includes Hispanic-serving institutions as defined in section 316(b)(1) of such Act (20 U.S.C. 1059c (b)(1)).

(b) Except for company or division-wide commercial items subcontracting plans, the term *small disadvantaged business,* when used in the FAR 52.219–9 clause, includes historically black colleges and universities and minority institutions, in addition to small disadvantaged business concerns.

(c) Work under the contract or its subcontracts shall be credited toward meeting the small disadvantaged business concern goal required by paragraph (d) of the FAR 52.219–9 clause when:

(1) It is performed on Indian lands or in joint venture with an Indian tribe or a tribally-owned corporation, and

(2) It meets the requirements of 10 U.S.C. 2323a.

(d) Subcontracts awarded to workshops approved by the Committee for Purchase from People Who Are Blind or Severely Disabled (41 U.S.C. 46–48), may be counted toward the Contractor's small business subcontracting goal.

(e) A mentor firm, under the Pilot Mentor-Protege Program established under Section 831 of Pub. L. 101–510, as amended, may count toward its small disadvantaged business goal, subcontracts awarded—

(1) Protege firms which are qualified organizations employing the severely handicapped; and

(2) Former protege firms that meet the criteria in Section 831(g)(4) of Pub. L. 101–510.

(f) The master plan approval referred to in paragraph (f) of the FAR 52.219–9 clause is approval by the Contractor's cognizant contract administration activity.

(g) In those subcontracting plans which specifically identify small, small disadvantaged, and women-owned small businesses, the Contractor shall notify the Administrative Contracting Officer of any substitutions of firms that are not small, small disadvantaged, or women-owned small businesses for the firms listed in the subcontracting plan. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 59 FR 22131, Apr. 29, 1994; 59 FR 27675, May 27, 1994; 60 FR 61601, Nov. 30, 1995; 61 FR 18688, Apr. 29, 1996]

252.219–7004 Small, small disadvantaged and women-owned small business subcontracting plan (test program).

As prescribed in 219.708(b)(1)(B), use the following clause:

SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (TEST PROGRAM) (JUNE 1997)

(a) *Definition. Subcontract,* as used in this clause, means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(b) The Offeror's comprehensive small business subcontracting plan and its successors,

which are authorized by and approved under the test program of Section 834 of Pub. L. 101–189, as amended, shall be included in and made a part of the resultant contract. Upon expulsion from the test program or expiration of the test program, the Contractor shall negotiate an individual subcontracting plan for all future contracts that meet the requirements of Section 211 of Pub. L. 95–507.

(c) The Contractor shall submit Standard Form (SF) 295, Summary Subcontract Report, in accordance with the instructions on the form, except—

(1) One copy of the SF 295 and attachments shall be submitted to Director, Small and Disadvantaged Business Utilization, Office of the Deputy Under Secretary of Defense (International and Commercial Programs), 3061 Defense Pentagon, Room 2A338, Washington, DC 20301–3061; and

(2) Item 14, Remarks, shall be completed to include semi-annual cumulative—

(i) Small business, small disadvantaged business, and women-owned small business goals; and

(ii) Small business and small disadvantaged business goals, actual accomplishments, and percentages for each of the two designated industry categories.

(d) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled ''Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns,'' or (2) an approved plan required by this clause, shall be a material breach of the contract.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 60 FR 35668, July 10, 1995; 61 FR 39901, July 31, 1996; 62 FR 34129, June 24, 1997]

252.219–7005 Incentive for subcontracting with small businesses, small disadvantaged businesses, historically black colleges and universities, and minority institutions.

As prescribed in 219.708(c)(1), use the following clause:

INCENTIVE FOR SUBCONTRACTING WITH SMALL BUSINESSES, SMALL DISADVANTAGED BUSINESSES, HISTORICALLY BLACK COLLEGES AND UNIVERSITIES, AND MINORITY INSTITUTIONS (NOV 1995)

(a) If the Contractor exceeds the small disadvantaged business, historically black college and university, minority institution goal of its subcontracting plan, at completion of contract performance, the Contractor will receive (Insert appropriate number between 1 and 10) percent of the excess.

(b) The Contractor will not receive this incentive if the Contracting Officer determines that exceeding the goal was not due to the Contractor's efforts (e.g., a subcontractor cost overrun or award of subcontracts planned but not disclosed in the subcontracting plan). Determinations made under this paragraph are not subject to the Disputes clause.

(c) If this is a cost contract, the limitations in FAR subpart 15.9 may not be exceeded.

(d) This clause does not apply if the subcontracting plan is a plant, division, or company-wide commercial items plan.

(End of clause)

ALTERNATE I (DEC. 1991)

As prescribed in 219.708(c)(1), add the following paragraph (b) to the basic clause and renumber the existing paragraphs (b), (c), and (d) as (c), (d), and (e).

(b) If the Contractor exceeds the small business goal of its subcontracting plan, at completion of contract performance, the Contractor will receive (Insert appropriate number between 1 and 10) percent of the excess.

[56 FR 36479, July 31, 1991, as amended at 60 FR 61601, Nov. 30, 1995]

252.219–7006 Notice of evaluation preference for small disadvantaged business concerns.

As prescribed in 219.7003, use the following clause:

NOTICE OF EVALUATION PREFERENCE FOR SMALL DISADVANTAGED BUSINESS CONCERNS (JUNE 1997)

(a) *Definitions. Historically black colleges and universities,* as used in this clause, means institutions determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. The term also means any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

Minority institutions, as used in this clause, means institutions meeting the requirements of section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d–5(3)). The term also includes Hispanic-serving institutions as defined in section 316(b)(1) of such Act (20 U.S.C. 1059c(b)(1)).

United States, as used in this clause, means the United States, its territories and possessions, the Commonwealth of Puerto Rico, the U.S. Trust Territory of the Pacific Islands, or the District of Columbia.

(b) *Evaluation preference.* (1) Offers will be evaluated by adding a factor of ten percent to the price of all offers, except—

(i) Offers from small disadvantaged business concerns, which have not waived the preference;

(ii) Offers from historically black colleges and universities or minority institutions, which have not waived the preference;

(iii) Otherwise successful offers of—

(A) Eligible products under the Trade Agreements Act when the dollar threshold for application of the Act is exceeded;

(B) Qualifying country end products (as defined in the Defense Federal Acquisition Regulation Supplement clause at 252.225–7001, Buy American Act and Balance of Payments Program); and

(iv) Offers where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government.

(2) The ten percent factor will be applied on a line item by line item basis or to any group of items on which award may be made. Other evaluation factors described in the solicitation will be applied before application of the ten percent factor. The ten percent factor will not be applied if using the preference would cause the contract award to be made at a price which exceeds the fair market price by more than ten percent.

(c) *Waiver of evaluation preference.* A small disadvantaged business, historically black college or university, or minority institution offeror may elect to waive the preference, in which case the ten percent factor will be added to its offer for evaluation purposes. The agreements in paragraph (d) do not apply to offers which waive the preference.

_____ Offeror elects to waive the preference

(d) *Agreements.* (1) A small disadvantaged business concern, historically black college or university, or minority institution offeror, which did not waive the preference, agrees that in performance of the contract, in the case of a contract for—

(i) Services, except construction, at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern.

(ii) Supplies (other than procurement from a regular dealer in such supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern.

(iii) General construction, at least 15 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern.

(iv) Construction by special trade contractors, at least 25 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern.

(2) A small disadvantaged business, historically black college or university, or minority institution regular dealer submitting an offer in its own name agrees to furnish in performing this contract only end items manufactured or produced in the United States by small disadvantaged business concerns, historically black colleges or universities, or minority institutions.

(3) Upon request, a historically black college or university or minority institution offeror will provide the Contracting Officer evidence that it has been determined to be an HBCU or MI by the Secretary of Education.

(End of clause)

ALTERNATE I (JUNE 1997)

As prescribed in 219.7003, substitute the following paragraph (d)(2) for paragraph (d)(2) of the basic clause:

(d)(2) A small disadvantaged business, historically black college or university, or minority institution regular dealer submitting an offer in its own name agrees to furnish in performing this contract only end items manufactured or produced in the United States by small business concerns, historically black colleges or universities, or minority institutions.

[56 FR 36479, July 31, 1991, as amended at 59 FR 22131, Apr. 29, 1994; 59 FR 24959, May 13, 1994; 60 FR 29502, June 5, 1995; 62 FR 34129, June 24, 1997]

252.219–7007 [Reserved]

252.219–7008 Notice of evaluation preference for small disadvantaged business concerns—construction acquisitions—test program.

As prescribed in 219.7204, use the following clause:

NOTICE OF EVALUATION PREFERENCE FOR SMALL DISADVANTAGED BUSINESS CONCERNS—CONSTRUCTION ACQUISITIONS—TEST PROGRAM (APR 1996)

(a) *Definitions.*

As used in this clause—

''Historically black colleges and universities (HBCUs),'' means institutions determined by the Secretary of Education to meet the requirements of 34 CFR Section 608.2. The term also means any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

''Minority institutions,'' means institutions meeting the requirements of paragraphs (3), (4), and (5) of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d–5(3)). The term also includes Hispanic-serving institutions as defined in Section 316(b)(1) of such Act (20 U.S.C. 1059c(b)(1)).

''Small disadvantaged business (SDB) concern,'' means a small business concern, owned and controlled by individuals who are

both socially and economically disadvantaged, as defined by the Small Business Administration at 13 CFR Part 124, the majority of earnings of which directly accrue to such individuals. This term also means a small business concern owned and controlled by an economically disadvantaged Indian tribe or Native Hawaiian organization which meets the requirements of 13 CFR 124.112 or 13 CFR 124.113, respectively.

(b) *Evaluation preference.*

(1) Offerors shall separately state bond costs in the offer. Bond costs include the costs of bid, performance, and payment bonds.

(2) Offers will be evaluated initially based on their total prices. If the apparently successful offeror is an SDB concern, no preference-based evaluation will be conducted.

(3) If the apparently successful offeror is not an SDB concern, offers will be evaluated based on their prices excluding bond costs. If, after excluding bond costs, the apparently successful offeror is an SDB concern, bond costs will be added back to all offers, and offers from SDB concerns will be given a preference in evaluation by adding a factor of 10 percent to the total price of all offers, except—

(i) Offers from SDBs which have not waived the evaluation preference; and

(ii) Offers from HBCUs or minority institutions, which have not waived the evaluation preference.

(c) *Waiver of evaluation preference.*

A small disadvantaged business, historically black college or university, or minority institution offeror may elect to waive the preference. The agreements in paragraph (d) of this clause do not apply to offers which waive the preference.

_____ Offeror elects to waive the preference.

(d) *Agreements.*

A small disadvantaged business concern, historically black college or university, or minority institution offeror, which did not waive the preference, agrees that in performance of the contract, in the case of a contract for—

(i) General construction, at least 15 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern.

(ii) Construction by special trade contractors, at least 25 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern.

(End of clause)

[61 FR 18688, Apr. 29, 1996]

252.222–7000 Restrictions on employment of personnel.

As prescribed in 222.7003, use the following clause:

RESTRICTIONS ON EMPLOYMENT OF PERSONNEL (DEC. 1991)

(a) The Contractor shall employ, for the purposes of performing that portion of the contract work in the State of (insert appropriate State), individuals who are residents of the State, and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills to perform the contract.

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in each subcontract.

(End of clause)

252.222–7001 Right of First Refusal of Employment—Closure of Military Installations.

As prescribed in 222.7102, use the following clause:

RIGHT OF FIRST REFUSAL OF EMPLOYMENT—CLOSURE OF MILITARY INSTALLATIONS (APR. 1992)

(a) The Contractor shall give Government employees, who have been or will be adversely affected by the closure of the military installation where this contract will be performed, the right of first refusal for employment openings under the contract. This right applies to positions for which the employee is qualified, if consistent with post-Government employment conflict of interest standards.

(b) Government personnel seeking preference under this clause shall provide the Contractor with evidence from the Government personnel office.

(End of clause)

[57 FR 52594, Nov. 4, 1992, as amended at 58 FR 28472, May 13, 1993]

252.222–7002 Compliance with local labor laws (overseas).

As prescribed in 222.7201(a), use the following clause:

COMPLIANCE WITH LOCAL LABOR LAWS (OVERSEAS) (JUNE 1997)

(a) The Contractor shall comply with all—

(1) Local laws, regulations, and labor union agreements governing work hours; and

(2) Labor regulations including collective bargaining agreements, workers' compensation, working conditions, fringe benefits, and labor standards or labor contract matters.

(b) The Contractor indemnifies and holds harmless the United States Government from all claims arising out of the requirements of this clause. This indemnity includes the Contractor's obligation to handle

and settle, without cost to the United States Government, any claims or litigation concerning allegations that the Contractor or the United States Government, or both, have not fully complied with local labor laws or regulations relating to the performance of work required by this contract.

(c) Notwithstanding paragraph (b) of this clause, consistent with paragraphs 31.205–15(a) and 31.205–47(d) of the Federal Acquisition Regulation, the Contractor will be reimbursed for the costs of all fines, penalties, and reasonable litigation expenses incurred as a result of compliance with specific contract terms and conditions or written instructions from the Contracting officer.

(End of clause)

[62 FR 34129, June 24, 1997]

252.222–7003 Permit from Italian Inspectorate of Labor.

As prescribed in 222.7201(b), use the following clause:

Permit from Italian Inspectorate of Labor (JUNE 1997)

Prior to the date set for commencement of work and services under this contract, the Contractor shall obtain the prescribed permit from the Inspectorate of Labor having jurisdiction over the work site, in accordance with Article 5g of Italian Law Number 1369, dated October 23, 1960. The Contractor shall ensure that a copy of the permit is available at all reasonable times for inspection by the Contracting Officer or an authorized representative. Failure to obtain such permit may result in termination of the contract for the convenience of the United States Government, at no cost to the United States Government.

(End of clause)

[62 FR 34129, June 24, 1997]

252.222–7004 Compliance with Spanish social security laws and regulations.

As prescribed in 222.7201(c), use the following clause:

COMPLIANCE WITH SPANISH SOCIAL SECURITY LAWS AND REGULATIONS (JUNE 1997)

(a) The Contractor shall comply with all Spanish Government social security laws and regulations. Within 30 calendar days after the start of contract performance, the Contractor shall ensure that copies of the documents identified in paragraph (a)(1) through (a)(5) of this clause are available at all reasonable times for inspection by the Contracting Officer or an authorized representative. The Contractor shall retain the records in accordance with the Audit and Records clause of this contract.

(1) TC1—Certificate of Social Security Payments;

(2) TC2—List of Employees;

(3) TC2/1—Certificate of Social Security Payments for Trainees;

(4) Nominal (pay statements) signed by both the employee and the Contractor; and

(5) Informa de Situacion de Empressa (Report of the Condition of the Enterprise) from the Ministerio de Trabajo y S.S., Tesoreria General de la Seguridad Social (annotated with the pertinent contract number(s) next to the employee's name).

(b) All TC1's, TC2's, and TC2/1's shall contain a representation that they have been paid by either the Social Security Administration office or the Contractor's bank or savings institution. Failure by the Contractor to comply with the requirements of this clause may result in termination of the contract under the clause of the contract entitled ''Default.''

(End of clause)

[62 FR 34129, June 24, 1997]

252.223–7000 [Reserved]

252.223–7001 Hazard warning labels.

As prescribed in 223.303, use the following clause:

HAZARD WARNING LABELS (DEC. 1991)

(a) ''Hazardous material,'' as used in this clause, is defined in the Hazardous Material Identification and Material Safety Data clause of this contract.

(b) The Contractor shall label the item package (unit container) of any hazardous material to be delivered under this contract in accordance with the Hazard Communication Standard (29 CFR 1910.1200 *et seq*). The Standard requires that the hazard warning label conform to the requirements of the standard unless the material is otherwise subject to the labelling requirements of one of the following statutes:

(1) Federal Insecticide, Fungicide and Rodenticide Act;

(2) Federal Food, Drug and Cosmetics Act;

(3) Consumer Product Safety Act;

(4) Federal Hazardous Substances Act; or

(5) Federal Alcohol Administration Act.

(c) The Offeror shall list which hazardous material listed in the Hazardous Material Identification and Material Safety Data clause of this contract will be labelled in accordance with one of the Acts in paragraphs (b) (1) through (5) of this clause instead of the Hazard Communication Standard. Any

hazardous material not listed will be interpreted to mean that a label is required in accordance with the Hazard Communication Standard.

Material (if none, insert "none.")	Act
_____	_____
_____	_____

(d) The apparently successful Offeror agrees to submit, before award, a copy of the hazard warning label for all hazardous materials not listed in paragraph (c) of this clause. The Offeror shall submit the label with the Material Safety Data Sheet being furnished under the Hazardous Material Identification and Material Safety Data clause of this contract.

(e) The Contractor shall also comply with MIL–STD–129, Marking for Shipment and Storage (including revisions adopted during the term of this contract).

(End of clause)

252.223–7002 Safety precautions for ammunition and explosives.

As prescribed in 223.370–5, use the following clause:

SAFETY PRECAUTIONS FOR AMMUNITION AND EXPLOSIVES (MAY 1994)

(a) *Definition. Ammunition and explosives,* as used in this clause—

(1) Means liquid and solid propellants and explosives, pyrotechnics, incendiaries and smokes in the following forms:

(i) Bulk,

(ii) Ammunition;

(iii) Rockets;

(iv) Missiles;

(v) Warheads;

(vi) Devices; and

(vii) Components of (i) through (vi), except for wholly inert items.

(2) This definition does not include the following, unless the Contractor is using or incorporating these materials for initiation, propulsion, or detonation as an integral or component part of an explosive, an ammunition or explosive end item, or of a weapon system—

(i) Inert components containing no explosives, propellants, or pyrotechnics;

(ii) Flammable liquids;

(iii) Acids;

(iv) Oxidizers;

(v) Powdered metals; or

(vi) Other materials having fire or explosive characteristics.

(b) *Safety requirements.* (1) The Contractor shall comply with the requirements of the DoD Contractors' Safety Manual for Ammunition and Explosives, DoD 4145.26–M, hereafter referred to as ''the manual,'' in effect on the date of the solicitation for this contract. The Contractor shall also comply with any other additional requirements included in the schedule of this contract.

(2) The Contractor shall allow the Government access to the Contractor's facilities, personnel, and safety program documentation. The Contractor shall allow authorized Government representatives to evaluate safety programs, implementation, and facilities.

(c) *Noncompliance with the manual.* (1) If the Contracting Officer notifies the Contractor of any noncompliance with the manual or schedule provisions, the Contractor shall take immediate steps to correct the noncompliance. The Contractor is not entitled to reimbursement of costs incurred to correct noncompliances unless such reimbursement is specified elsewhere in the contract.

(2) The Contractor has 30 days from the date of notification by the Contracting Officer to correct the noncompliance and inform the Contracting Officer of the actions taken. The Contracting Officer may direct a different time period for the correction of noncompliances.

(3) If the Contractor refuses or fails to correct noncompliances within the time period specified by the Contracting Officer, the Government has the right to direct the Contractor to cease performance on all or part of this contract. The Contractor shall not resume performance until the Contracting Officer is satisfied that the corrective action was effective and the Contracting Officer so informs the Contractor.

(4) The Contracting Officer may remove Government personnel at any time the Contractor is in noncompliance with any safety requirement of this clause.

(5) If the direction to cease work or the removal of Government personnel results in increased costs to the Contractor, the Contractor shall not be entitled to an adjustment in the contract price or a change in the delivery or performance schedule unless the Contracting Officer later determines that the Contractor had in fact complied with the manual or schedule provisions. If the Contractor is entitled to an equitable adjustment, it shall be made in accordance with the Changes clause of this contract.

(d) *Mishaps.* If a mishap involving ammunition or explosives occurs, the Contractor shall—

(1) Notify the Contracting Officer immediately;

(2) Conduct an investigation in accordance with other provisions of this contract or as required by the Contracting Officer; and

(3) Submit a written report to the Contracting Officer.

(e) *Contractor responsibility for safety.* (1) Nothing in this clause, nor any Government action or failure to act in surveillance of this contract, shall relieve the Contractor of its responsibility for the safety of—

(i) The Contractor's personnel and property;

(ii) The Government's personnel and property; or

(iii) The general public.

(2) Nothing in this clause shall relieve the Contractor of its responsibility for complying with applicable Federal, State, and local laws, ordinances, codes, and regulations (including those requiring the obtaining of licenses and permits) in connection with the performance of this contract.

(f) *Contractor responsibility for contract performance.* (1) Neither the number or frequency of inspections performed by the Government, nor the degree of surveillance exercised by the Government, relieve the Contractor of its responsibility for contract performance.

(2) If the Government acts or fails to act in surveillance or enforcement of the safety requirements of this contract, this does not impose or add to any liability of the Government.

(g) *Subcontractors.* (1) The Contractor shall insert this clause, including this paragraph (g), in every subcontract that involves ammunition or explosives.

(i) The clause shall include a provision allowing authorized Government safety representatives to evaluate subcontractor safety programs, implementation, and facilities as the Government determines necessary.

(ii) NOTE: The Government Contracting Officer or authorized representative shall notify the prime Contractor of all findings concerning subcontractor safety and compliance with the manual. The Contracting Officer or authorized representative may furnish copies to the subcontractor. The Contractor in turn shall communicate directly with the subcontractor, substituting its name for references to ''the Government''. The Contractor and higher tier subcontractors shall also include provisions to allow direction to cease performance of the subcontract if a serious uncorrected or recurring safety deficiency potentially causes an imminent hazard to DoD personnel, property, or contract performance.

(2) The Contractor agrees to ensure that the subcontractor complies with all contract safety requirements. The Contractor will determine the best method for verifying the adequacy of the subcontractor's compliance.

(3) The Contractor shall ensure that the subcontractor understands and agrees to the Government's right to access to the subcontractor's facilities, personnel, and safety program documentation to perform safety surveys. The Government performs these safety surveys of subcontractor facilities solely to prevent the occurrence of any mishap which would endanger the safety of DoD personnel or otherwise adversely impact upon the Government's contractual interests.

(4) The Contractor shall notify the Contracting Officer or authorized representative before issuing any subcontract when it involves ammunition or explosives. If the proposed subcontract represents a change in the place of performance, the Contractor shall request approval for such change in accordance with the clause of this contract entitled ''Change in Place of Performance—Ammunition and Explosives''.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 59 FR 27675, May 27, 1994]

252.223–7003 Change in place of performance—ammunition and explosives.

As prescribed in 223.370–5, use the following clause:

CHANGE IN PLACE OF PERFORMANCE—AMMUNITION AND EXPLOSIVES (DEC. 1991)

(a) The Offeror shall identify, in the ''Place of Performance'' provision of this solicitation, the place of performance of all ammunition and explosives work covered by the Safety Precautions for Ammunition and Explosives clause of this solicitation. Failure to furnish this information with the offer may result in rejection of the offer.

(b) The Offeror agrees not to change the place of performance of any portion of the offer covered by the Safety Precautions for Ammunition and Explosives clause contained in this solicitation after the date set for receipt of offers without the written approval of the Contracting Officer. The Contracting Officer shall grant approval only if there is enough time for the Government to perform the necessary safety reviews on the new proposed place of performance.

(c) If a contract results from this offer, the Contractor agrees not to change any place of performance previously cited without the advance written approval of the Contracting Officer.

(End of clause)

252.223–7004 [Reserved]

252.223–7005 Hazardous waste liability.

As prescribed in 223.7002, use the following clause:

HAZARDOUS WASTE LIABILITY (OCT. 1992)

(a) *Definitions.*

As used in this clause—

(1) *Hazardous waste* has the meaning given that term by section 1004(5) of the Solid Waste Disposal Act (42 U.S.C. 6903(5)), except

that such term also includes polychlorinated biphenyls (PCB).

(2) *Polychlorinated biphenyls* (PCB) has the meaning given that term under section 6(e) of the Toxic Substances Control Act (15 U.S.C. 2605(e)).

(b) Upon receipt of hazardous waste properly characterized pursuant to applicable laws and regulations, the Contractor agrees that it shall reimburse the Government for any penalties assessed against, all liabilities incurred by, costs incurred by, and damages suffered by, the Government that are caused by—

(1) The Contractor's breach of any term of the contract; or

(2) Any negligent or willful act or omission of the Contractor or employees of the Contractor, in the performance of the contract.

(c) Not later than 30 days after the award date of the contract, the Contractor shall demonstrate the ability to reimburse the Government as provided in paragraph (b) of this clause, by providing evidence to the Contracting Officer that—

(1) The facility has liability insurance meeting the requirements of 40 CFR 264.147; or

(2) The facility meets the financial assurance requirements of 40 CFR 264.147 for sudden and nonsudden accidental occurrences.

(d) This clause does not apply to—

(1) Performance of remedial action or corrective action under—

(i) The Defense Environmental Restoration Program;

(ii) Other programs or activities of the Department of Defense; or

(iii) Authorized State hazardous waste programs;

(2) Disposal of hazardous waste when the generation of such waste is incidental to the performance of the contract: or

(3) Disposal of ammunition or solid rocket motors.

(e) The Contractor shall include this clause, including this paragraph (e), in each subcontract under which the subcontractor receives hazardous waste from a defense facility.

(End of clause)

[57 FR 53601, Nov. 12, 1992; 58 FR 40388, July 28, 1993]

§ 252.223–7006 Prohibition on storage and disposal of toxic and hazardous materials.

As prescribed in 223.7103(a), use the following clause:

PROHIBITION ON STORAGE AND DISPOSAL OF TOXIC AND HAZARDOUS MATERIALS (APR. 1993)

(a) *Definitions.*

As used in this clause—

(1) *Storage* means a non-transitory, semi-permanent or permanent holding, placement, or leaving of material. It does not include a temporary accumulation of a limited quantity of a material used in or a waste generated or resulting from authorized activities, such as servicing, maintenance, or repair of Department of Defense (DoD) items, equipment, or facilities.

(2) *Toxic or hazardous materials* means:

(i) Materials referred to in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (42 U.S.C. 9601(14)) and materials designated under section 102 of CERCLA (42 U.S.C. 9602) (40 CFR part 302);

(ii) Materials that are of an explosive, flammable, or pyrotechnic nature; or

(iii) Materials otherwise identified by the Secretary of Defense as specified in DoD regulations.

(b) In accordance with 10 U.S.C. 2692, the Contractor is prohibited from storing or disposing of non-DoD-owned toxic or hazardous materials on a DoD installation, except to the extent authorized by a statutory exception to 10 U.S.C. 2692 or as authorized by the Secretary of Defense or his designee.

ALTERNATE I (NOV 1995)

As prescribed in 223.7103(b), add the following paragraphs (c) and (d) to the basic clause:

(c) With respect to treatment or disposal authorized pursuant to 10 U.S.C. 2692(b)(9), and notwithstanding any other provision of the contract, the Contractor assumes all financial and environmental responsibility and liability resulting from any treatment or disposal of non-DoD-owned toxic or hazardous materials on a military installation. The Contractor shall indemnify, defend, and hold the Government harmless for all costs, liability, or penalties resulting from the Contractor's treatment or disposal of non-DoD-owned toxic or hazardous materials on a military installation.

(d) The Contractor shall include this clause, including this paragraph (d), in each subcontract which requires, may require, or permits a subcontractor to treat or dispose of non-DoD-owned toxic or hazardous materials as defined in this clause.

[58 FR 28472, May 13, 1993, as amended at 60 FR 13076, Mar. 10, 1995; 60 FR 61601, Nov. 30, 1995]

252.223–7007 Safeguarding sensitive conventional arms, ammunition, and explosives.

As prescribed in 223.7203, use the following clause:

SAFEGUARDING SENSITIVE CONVENTIONAL ARMS, AMMUNITION, AND EXPLOSIVES (FEB 1996)

(a) Definition.

''Arms, ammunition, and explosives (AA&E),'' as used in this clause, means those items within the scope (chapter 1, paragraph B) of DoD 5100.76–M, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives.

(b) The requirements of DoD 5100.76–M apply to the following items of AA&E being developed, produced, manufactured, or purchased for the Government, or provided to the Contractor as Government-furnished property under this contract:

Nomenclature	National stock number	Sensitivity category

(c) The Contractor shall comply with the requirements of DoD 5100.76–M, as specified in the statement of work. The edition of DoD 5100.76–M in effect on the date of issuance of the solicitation for this contract shall apply.

(d) The Contractor shall allow representatives of the Defense Investigative Service (DIS), and representatives of other appropriate offices of the Government, access at all reasonable times into its facilities and those of its subcontractors, for the purpose of performing surveys, inspections, and investigations necessary to review compliance with the physical security standards applicable to this contract.

(e) The Contractor shall notify the cognizant DIS field office of any subcontract involving AA&E within 10 days after award of the subcontract.

(f) The Contractor shall ensure that the requirements of this clause are included in all subcontracts, at every tier—

(1) For the development, production, manufacture, or purchase of AA&E; or

(2) When AA&E will be provided to the subcontractor as Government-furnished property.

(g) Nothing in this clause shall relieve the Contractor of its responsibility for complying with applicable Federal, state, and local laws, ordinances, codes, and regulations (including requirements for obtaining licenses and permits) in connection with the performance of this contract.

(End of clause)

[61 FR 7750, Feb. 29, 1996]

252.225–7000 Buy American Act—Balance of Payments Program Certificate.

As prescribed in 225.109(a), use the following provision:

BUY AMERICAN ACT—BALANCE OF PAYMENTS PROGRAM CERTIFICATE (DEC. 1991)

(a) *Definitions. Domestic end product, qualifying country, qualifying country end product,* and *qualifying country end product* have the meanings given in the Buy American Act and Balance of Payments Program clause of this solicitation.

(b) *Evaluation.* Offers will be evaluated by giving preference to domestic end products and qualifying country end products over nonqualifying country end products.

(c) *Certifications.* (1) The Offeror certifies that—

(i) Each end product, except those listed in paragraphs (c) (2) or (3) of this clause, is a domestic end product; and

(ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The Offeror certifies that the following end products are qualifying country end products:

QUALIFYING COUNTRY END PRODUCTS

Line item No.	Country of origin
_____	_____

(List only qualifying country end products.)

(3) The Offeror certifies that the following end products are nonqualifying country end products:

NONQUALIFYING COUNTRY END PRODUCTS

Line item No.	Country of origin (If known)
_____	_____

(End of provision)

252.225–7001 Buy American Act and Balance of Payments Program.

As prescribed in 225.109(d), use the following clause:

BUY AMERICAN ACT AND BALANCE OF PAYMENTS PROGRAM (JAN. 1994)

(a) *Definitions.* (1) *Components* means those articles, materials, and supplies directly incorporated into end products.

(2) *Qualifying country* means any country set forth in subsection 225.872–1 of the Defense FAR Supplement.

(3) *Qualifying country component* means an item mined, produced, or manufactured in a qualifying country.

(4) *End product* means those articles, materials, and supplies to be acquired for public use under the contract. For this contract, the end products are the line items to be delivered to the Government (including supplies to be acquired by the Government for

public use in connection with service contracts, but excluding installation and other services to be performed after delivery).

(5) *Domestic end product* means—

(i) An unmanufactured end product which has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if the cost of its qualifying country components and its components which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate may be issued). Consider a component to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind—

(A) Determined to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality; or

(B) Which the Secretary concerned determines would be inconsistent with the public interest to apply the restrictions of the Buy American Act.

(6) *Nonqualifying country end product* means an end product which is neither a domestic end product nor a qualifying country end product.

(7) *Qualifying country end product* means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if the cost of the components mined, produced, or manufactured in the qualifying country and its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components.

(b) This clause implements the Buy American Act (41 U.S.C. 10a–d) in a manner that will encourage a favorable international balance of payments by providing a preference to domestic end products over other end products, except for end products which are qualifying country end products.

(c) The Contractor agrees that it will deliver only domestic end products unless, in its offer, it specified delivery of other end products in the Buy American Act and Balance of Payments Certificate or the Buy American Act—Trade Agreements—Balance of Payments Program Certificate. An offer certifying that a qualifying country end product will be supplied requires the Contractor to deliver a qualifying country end product or a domestic end product.

(d) The offered price of nonqualifying country end products must include all applicable duty. Generally, when the Buy American Act is applicable, each nonqualifying country offer is adjusted for the purpose of evaluation by adding 50 percent of the offer, inclusive of duty.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 59 FR 1290, Jan. 10, 1994]

252.225–7002 Qualifying country sources as subcontractors.

As prescribed in 225.109–70(a), use the following clause:

QUALIFYING COUNTRY SOURCES AS SUBCONTRACTORS (DEC. 1991)

Subject to the restrictions in section 225.872 of the Defense FAR Supplement, the Contractor shall not preclude qualifying country sources and U.S. sources from competing for subcontracts under this contract.

(End of clause)

252.225–7003 Information for duty-free entry evaluation.

As prescribed in 225.109–70(b), use the following provision:

INFORMATION FOR DUTY-FREE ENTRY EVALUATION (AUG. 1992)

(a) Is the offer based on furnishing any supplies (i.e., end items, components, or material) of foreign origin other than those for which duty-free entry is to be accorded pursuant to the Duty-Free Entry—Qualifying Country End Products and Supplies clause of this solicitation?

Yes ( )
No ( )

(b) If the answer in paragraph (a) is yes, answer the following questions:

(1) Are such foreign supplies now in the United States?

Yes ( )
No ( )

(2) Has the duty on such foreign supplies been paid?

Yes ( )
No ( )

(3) If the answer to paragraph (b)(2) is no, what amount is included in the offer to cover such duty? $_____

(c) If the duty has not been paid, the Government may elect to make award on a duty-free basis. If so, the offered price will be reduced in the contract award by the amount specified in paragraph (b)(3). The Offeror agrees to identify, at the request of the Contracting Officer, the foreign supplies which are subject to duty-free entry.

(d) Offers will be evaluated on a duty included basis except to the extent that—

(1) The supplies are qualifying country end products as defined in the Buy American Act and Balance of Payments Program clause of this solicitation; or

(2) The duty-free price is specified for use in the evaluation procedure.

(End of provision)

[56 FR 36479, July 31, 1991, as amended at 57 FR 42633, Sept. 15, 1992]

252.225–7004 [Reserved]

252.225–7005 Identification of expenditures in the United States.

As prescribed in 225.305–70, use the following clause:

IDENTIFICATION OF EXPENDITURES IN THE UNITED STATES (DEC. 1991)

(a) On each invoice, voucher, or other request for payment under this contract, the Contractor shall identify that part of the requested payment which represents estimated expenditures in the United States. The identification—

(1) May be expressed either as dollar amounts or as percentages of the total amount of the request for payment.

(2) Should be based on reasonable estimates.

(3) Shall consist of stating the full amount of the payment requested, subdivided into the following categories:

(i) U.S. products—expenditures for material and equipment manufactured or produced in the United States, excluding transportation;

(ii) U.S. services—expenditures for services performed in the United States, including charges for overhead, other indirect costs, and profit;

(iii) Transportation on U.S. carriers—expenditures for transportation furnished by U.S. flag, ocean, surface, and air carriers; and

(iv) Expenditures not identified under paragraphs (a) (1), (2), and (3).

(b) If this contract is principally for supplies or if the Contractor is not an incorporated concern incorporated in the United States, or an unincorporated concern having its principal place of business in the United States, the amounts identified under paragraphs (a)(3) (i), (ii), and (iii) will be limited to payments made pursuant to the requirements either of the United States Products and Services clause, if any, or of any other specific provision of this contract that obligates the Contractor to acquire certain materials, equipment, transportation, or services from U.S. sources.

(c) Nothing in this clause requires the establishment or maintenance of detailed accounting records or gives the U.S. Government any right to audit the Contractor's books or records.

(End of clause)

252.225–7006 Buy American Act—trade agreements—Balance of Payments Program certificate.

As prescribed in 225.408(a)(1), use the following provision:

BUY AMERICAN ACT—TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM CERTIFICATE (JUNE 1997)

(a) *Definitions.* ''Caribbean Basin country end product,'' ''designated country end product,'' ''domestic end product,'' ''NAFTA country end product,'' ''nondesignated country end product,'' ''qualifying country end product,'' and ''U.S. made end product'' have the meanings given in the Trade Agreements and the Buy American Act and Balance of Payments Program clauses of this solicitation.

(b) *Evaluation.* Offers will be evaluated in accordance with the policies and procedures of Part 225 of the Defense Federal Acquisition Regulation Supplement. Offers of foreign end products that are not U.S. made, qualifying country, designated country, Caribbean Basin country, or NAFTA country end products will not be considered for award, unless the Contracting Officer determines that there are no offers of such end products; or the offers of such end products are insufficient to fulfill the requirements; or a national interest exception to the Trade Agreements Act is granted.

(c) *Certifications.* (1) The Offeror certifies that—

(i) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product (as defined in the Buy American Act and Balance of Payments Program clause of this solicitation); and

(ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The Offeror must identify and certify all end products that are not domestic end products.

(i) The Offeror certifies that the following supplies qualify as ''U.S. made end products'' but do not meet the definition of ''domestic end product'':

(insert line item number)

_____

(ii) The Offeror certifies that the following supplies are qualifying country end products:

(insert line item number)

_____

(insert country of origin)

(iii) The Offeror certifies that the following supplies qualify as designated country end products:

(insert line item number)

(insert country of origin)

(iv) The Offeror certifies that the following supplies qualify as Caribbean Basin country end products:

(insert line item number)

(insert country of origin)

(v) The Offeror certifies that the following supplies qualify as NAFTA country end products:

(insert line item number)

(insert country of origin)

(vi) The Offeror certifies that the following supplies are other nondesignated country end products.

(insert line item number)

(insert country of origin)

(End of provision)

[62 FR 34129, June 24, 1997]

252.225–7007 Trade agreements.

As prescribed in 225.408(a)(2), use the following clause:

TRADE AGREEMENTS (JUL 1997)

(a) *Definitions.* As used in this clause—

(1) ''Caribbean Basin country'' means—

Antigua and Barbuda
Aruba
Bahamas
Barbados
Belize
British Virgin Islands
Costa Rica
Dominica
Dominican Republic
El Salvador
Grenada
Guatemala
Guyana
Haiti
Honduras
Jamaica
Montserrat
Netherlands Antilles
Nicaragua
Panama
St. Kitts-Nevis
St. Lucia
St. Vincent and the Grenadines
Trinadad and Tobago

(2) ''Caribbean Basin country end product''—

(i) Means an article that—

(A) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(B) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(ii) Excludes products, other than petroleum and any product derived from petroleum, that are not granted duty-free treatment under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)). These exclusions presently consist of—

(A) Textiles and apparel articles that are subject to textile agreements;

(B) Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated as eligible articles for the purpose of the Generalized System of Preferences under Title V of the Trade Act of 1974;

(C) Tuna, prepared or preserved in any manner in airtight containers; and

(D) Watches and watch parts (including cases, bracelets, and straps) of whatever type, including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which Harmonized Tariff Schedule column 2 rates of duty apply.

(3) ''Components,'' ''domestic end product,'' ''end product,'' ''nonqualifying country,'' ''qualifying country,'' and ''qualifying country end product'' have the meanings given in the Buy American Act and Balance of Payments Program clause of this contract.

(4) ''Designated country'' means—

Aruba
Austria
Bangladesh
Belgium
Benin
Bhutan
Botswana
Burkina Faso
Burundi
Canada
Cape Verde

Central African Republic
Chad
Comoros
Denmark
Djibouti
Equatorial Guinea
Finland
France
Gambia
Germany
Greece
Guinea
Guinea-Bissau
Haiti
Hong Kong
Ireland
Israel
Italy
Japan
Kiribati
Lesotho
Liechtenstein
Luxembourg
Malawi
Maldives
Mali
Mozambique
Nepal
Netherlands
Niger
Norway
Portugal
Republic of Korea
Rwanda
Sao Tome and Principe
Sierra Leone
Singapore
Somalia
Spain
Sweden
Switzerland
Tanzania U.R.
Togo
Tuvalu
Uganda
United Kingdom
Vanuatu
Western Samoa
Yemen

(5) ''Designated country end product'' means an article that—

(i) Is wholly the growth, product, or manufacture of the designated country; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a designated country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(6) ''NAFTA country end product'' means an article that—

(i) Is wholly the growth, product, or manufacture of the NAFTA country; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(7) ''Nondesignated country end product'' means any end product that is not a U.S. made end product or a designated country end product.

(8) ''North American Free Trade Agreement (NAFTA) country'' means Canada or Mexico.

(9) ''United States'' means the United States, its possessions, Puerto Rico, and any other place subject to its jurisdiction, but does not include leased bases or trust territories.

(10) ''U.S. made end product'' means an article that—

(i) Is wholly the growth, product, or manufacture of the United States; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

(b) Unless otherwise specified, the Trade Agreements Act of 1979 (19 U.S.C. 2501 et seq.), the North American Free Trade Agreement Implementation Act of 1993 (19 U.S.C. 3301 note), and the Caribbean Basin Initiative apply to all items in the Schedule.

(c)(1) The Contractor agrees to deliver under this contract only domestic end products unless, in its offer, it specified delivery of U.S. made, qualifying country, designated country, Caribbean Basin country, NAFTA country, or other nondesignated country end products in the Buy American Act—Trade Agreements—Balance of Payments Program Certificate provision of the solicitation.

(2) The Contractor may not supply a nondesignated country end product unless—

(i) It is a qualifying country end product, a Caribbean Basin country end product, or a NAFTA country end product;

(ii) The Contracting Officer has determined that offers of U.S. made end products or

qualifying, designated, NAFTA, or Caribbean Basin country end products from responsive, responsible offerors are either not received or are insufficient to fill the Government's requirements; or

(iii) A national interest waiver has been granted under section 302 of the Trade Agreements Act of 1979 (see FAR 25.402(c)).

(d) The offered price of end products listed and certified under paragraphs (c)(2)(i) and (vi) of the Buy American Act—Trade Agreements—Balance of Payments Program Certificate provision of the solicitation must include all applicable duty. The offered price of qualifying country end products, designated country end products, NAFTA country end products, and Caribbean Basin country end products for line items subject to the Trade Agreements Act, or the North American Free Trade Agreement Implementation Act, should not include custom fees or duty.

(End of clause)

ALTERNATE I (JUNE 1997). AS PRESCRIBED IN 225.408(a)(2), DELETE SINGAPORE FROM THE LIST OF DESIGNATED COUNTRIES IN PARAGRAPH (A)(4) OF THE BASIC CLAUSE.

[62 FR 34130, June 24, 1997, as amended at 62 FR 37148, July 11, 1997]

252.225–7008 Supplies to be accorded duty-free entry.

As prescribed in 225.605–70(a), use the following clause:

SUPPLIES TO BE ACCORDED DUTY-FREE ENTRY (DEC. 1991)

In accordance with paragraph (a) of the Duty-Free Entry clause and/or paragraph (b) of the Duty-Free Entry—Qualifying Country End Products and Supplies clause of this contract, the following supplies are accorded duty-free entry:

_____

_____

_____

(End of clause)

252.225–7009 Duty-free entry—qualifying country end products and supplies.

As prescribed in 225.605–70(b), use the following clause:

DUTY-FREE ENTRY—QUALIFYING COUNTRY END PRODUCTS AND SUPPLIES (JAN 1997)

(a) *Definitions.*

Qualifying country and *qualifying country end products* have the meaning given in the Buy American Act and Balance of Payments Program clause of this contract.

(b) The requirements of this clause apply to this contract and subcontracts, including purchase orders, that involve supplies to be accorded duty-free entry whether—

(1) Placed directly with a foreign concern as a prime contract; or

(2) As a subcontract or purchase order under a contract placed with a domestic concern.

(c) Except as otherwise approved by the Contracting Officer, no amount is or will be included in the contract price for duty for—

(1) End items that are qualifying country end products; or

(2) Supplies (including without limitation, raw materials, components, and intermediate assemblies) produced or made in qualifying countries, that are to be incorporated in the end items to be delivered under this contract, provided that the end items are manufactured in the United States or in a qualifying country, except supplies imported into the United States before the date of this contract or, in the case of supplies imported by a first or lower tier subcontractor, before the date of the subcontract.

(d) The Contractor warrants that—

(1) All qualifying country supplies, for which duty-free entry is to be claimed, are intended to be delivered to the Government or incorporated in the end items to be delivered under this contract; and

(2) The Contractor will pay duty to the extent that such supplies, or any portion thereof (if not scrap or salvage) are diverted to nongovernmental use, other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer.

(e) The Government agrees to execute duty-free entry certificates and to afford such assistance as appropriate to obtain the duty-free entry of qualifying country supplies for which the shipping documents bear the notation specified in paragraph (f) of this clause, except as the Contractor may otherwise agree.

(f) All shipping documents submitted to Customs, covering foreign end products or supplies for which duty-free entry certificates are to be issued under this clause, shall—

(1) Consign the shipments to the appropriate—

(i) Military department in care of the Contractor, including the Contractor's delivery address; or

(ii) Military installation; and

(2) Include the following information—

(i) Prime contract number, and delivery order if applicable;

(ii) Number of the subcontract/purchase order for foreign supplies if applicable;

(iii) Identification of carrier;

(iv) The notation: UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE Duty-Free Entry to be claimed pursuant to section XXII, chapter 98, subchapter VIII,

item 9808.00.30 of the Harmonized Tariff Schedule of the United States. Upon arrival of shipment at the appropriate port of entry, District Director of Customs, please release shipment under 19 CFR part 142 and notify Commander, Defense Contract Management Area Operations (DCMAO) New York, attn: Customs Team, DCMDN–GNIC, 207 New York Avenue, Staten Island, New York, 10305-5013, for execution of Customs Forms 7501, 7501A, or 7506 and any required duty-free entry certificates. (NOTE: This notation shall be used only for direct shipments to a U.S. military installation. In cases where the shipment will be consigned to other than a military installation, e.g., a domestic contractor's plant, the shipping document notation shall be altered to insert the name and address of the contractor, agent or broker who will notify Commander, Defense Contract Management Area Operations (DCMAO) New York, for execution of the duty-free certificate.)

(v) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight);

(vi) Estimated value in U.S. dollars; and

(vii) Activity Address Number of the contract administration office actually administering the prime contract, e.g., for DCMAO Dayton, DLA8DP.

(g) *Preparation of customs forms.* (1) Except for shipments consigned to a military installation, the Contractor shall prepare, or authorize an agent to prepare, any customs forms required for the entry of foreign supplies in connection with DoD contracts into the United States, its possessions, or Puerto Rico. Submit the completed customs forms to the District Director of Customs with a copy to DCMAO NY for execution of any required duty-free entry certificates. Shipments consigned directly to a military installation will be released in accordance with 10.101 and 10.102 of the U.S. Custom regulations.

(2) For shipments containing both supplies which are to be accorded duty-free entry and supplies which are not, the Contractor shall identify on the customs forms those items that are eligible for duty-free entry.

(h) The contractor agrees—

(1) To prepare (if this contract is placed directly with a foreign supplier), or to instruct the foreign supplier to prepare, a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry;

(2) To consign the shipment as specified in paragraph (f) of this clause; and

(3) To mark the exterior of all packages as follows:

(i) ''UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE;'' and

(ii) The activity address number of the contract administration office actually administering the prime contract.

(i) The Contractor agrees to notify the Contracting Officer administering the prime contract in writing of any purchase under the contract of qualifying country supplies to be accorded duty-free entry that are to be imported into the United States for delivery to the Government or for incorporation in end items to be delivered to the Government. The notice shall be furnished to the contract administration office immediately upon award to the qualifying country supplier. The notice shall contain—

(1) Prime contractor's name, address, and CAGE code;

(2) Prime contract number, and delivery order number if applicable;

(3) Total dollar value of the prime contract or delivery order;

(4) Expiration date of the prime contract or delivery order;

(5) Foreign supplier's name and address;

(6) Number of the subcontract/purchase order for foreign supplies;

(7) Total dollar value of the subcontract for foreign supplies;

(8) Expiration date of the subcontract for foreign supplies;

(9) List of items purchased;

(10) An agreement by the Contractor that duty shall be paid by the Contractor to the extent that such supplies, or any portion (if not scrap or salvage), are diverted to nongovernmental use other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer;

(11) The qualifying country; and

(12) The scheduled delivery date(s).

(j) This clause does not apply to purchases of qualifying country supplies in connection with this contract if—

(1) The qualifying country supplies are identical in nature to supplies purchased by the Contractor or any subcontractor in connection with its commercial business; and

(2) It is not economical or feasible to account for such supplies so as to ensure that the amount of the supplies for which duty-free entry is claimed does not exceed the amount purchased in connection with this contract.

(k) The Contractor agrees to insert the substance of this clause, including this paragraph (k) in all subcontracts for supplies. Each subcontract shall require the subcontractor to identify this contract by including its contract number on any shipping documents submitted to Customs covering supplies for which duty-free entry is to be claimed pursuant to this clause. The Contractor also agrees that the name and address of the Contracting Officer administering the prime contract (name and address of the contract administration office cognizant

of the prime contract), and its activity address number (appendix G of the Defense FAR Supplement), and the information required by paragraphs (i) (1), (2), and (3) of this clause will be included in applicable subcontracts.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 56 FR 67221, Dec. 30, 1991; 60 FR 29502, June 5, 1995; 62 FR 2614, Jan. 17, 1997]

252.225–7010 Duty-free entry—additional provisions.

As prescribed in 225.605–70(d), use the following clause:

DUTY-FREE ENTRY—ADDITIONAL PROVISIONS (JAN 1997)

(a) The requirements of this clause supplement the Duty-Free Entry clause of this contract.

Both of these clauses apply to this contract and subcontracts, including purchase orders, that involve supplies to be accorded duty-free entry whether placed—

(1) Directly with a foreign concern as a prime contract; or

(2) As a subcontractor purchase order under a contract with a domestic concern.

(b) The Contractor shall send the notification required by paragraph (b)(1) of the Duty-Free Entry clause of this contract to the Contracting Officer administering this contract.

(c) In addition to any data required by paragraph (b)(1) of the Duty-Free Entry clause, the Contractor shall furnish the following for all foreign supplies to be imported pursuant to paragraphs (a) or (b) of the Duty-Free Entry clause. Furnish this information to the Contracting Officer administering the prime contract immediately upon award of any contract or subcontract involving supplies to be accorded duty-free entry.

(1) Prime contractor's name, address, and CAGE code;

(2) Prime contract number plus delivery order number, if applicable;

(3) Total dollar value of the prime contract or delivery order;

(4) Expiration date of the prime contract or delivery order;

(5) Foreign supplier's name and address;

(6) Number of the subcontract/purchase order for foreign supplies;

(7) Total dollar value of the subcontract for foreign supplies;

(8) Expiration date of the subcontract for foreign supplies;

(9) List of items purchased; and

(10) An agreement by the Contractor that duty shall be paid by the Contractor to the extent that such supplies, or any portion (if not scrap or salvage), are diverted to nongovernmental use other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer.

(d) The Contractor agrees to incorporate the substance of this clause, including this paragraph (d), in any subcontract (including purchase orders) in accordance with paragraph (i) of the Duty-Free Entry clause of this contract. The Contractor agrees that the name and address of the Contracting Officer administering the prime contract (name and address of the contract administration office cognizant of the prime contract and its activity address number (appendix G of the Defense FAR Supplement)) and the information required by paragraphs (c)(1), (2), and (3) of this clause will be included in applicable subcontracts.

(e) To properly complete the shipping document instructions as required by paragraph (f) of the Duty-Free Entry clause, the Contractor shall insert Defense Contract Management Area Operations (DCMAO) New York, attn: Customs Team, DCMDN–GNIC, 207 New York Avenue, Staten Island, New York, 10305-5013, as the cognizant contract administration office (for paragraph (f) only) in those cases when the shipment is consigned directly to a military installation. When the shipment will be consigned to a location other than a military installation, e.g., a domestic contractor's plant, change the shipping document notation required by paragraph (f) of the clause to insert the name and address of the Contractor, agent or broker that will prepare the customs documentation for execution of the Duty-Free Entry certificates. In either case, the shipping documents will contain the following items in addition to those required by paragraph (f) of the Duty-Free Entry clause:

(1) Delivery order number on the Government prime contract, if applicable;

(2) Number of the subcontract/purchase order for foreign supplies, if applicable;

(3) Activity address number of the contract administration office actually administering the prime contract, e.g., for DCMAO Dayton, DLA8DP.

(f) Except for shipments consigned to a military installation, the Contractor shall prepare, or authorize an agent to prepare, any customs forms required for the entry into the United States, its possessions, or Puerto Rico of foreign supplies in connection with DoD contracts. The Contractor shall submit the completed customs forms to the District Director of Customs with a copy to DCMAO New York for execution of any required duty-free entry certificates. For shipments containing both supplies which are to be accorded duty-free entry and supplies which are not, the Contractor shall identify on the customs forms those items which are

eligible for duty-free entry under the provisions of the Duty-Free Entry clause. Shipments consigned directly to a military installation will be released in accordance with §§10.101 and 10.102 of the U.S. Customs regulations.

(g) The Contractor shall ensure that all exterior containers are marked in accordance with paragraph (g) of the Duty-Free Entry clause, including the following additional data—

(1) ''UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE;'' and

(2) The activity address number for the contract administration office actually administering the prime contract.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 59 FR 1291, Jan. 10, 1994; 60 FR 29502, June 5, 1995; 62 FR 2614, Jan. 17, 1997]

252.225–7011 9 Restriction on acquisition of supercomputers.

As prescribed in 225.7023–3, use the following clause:

RESTRICTION ON ACQUISITION OF SUPERCOMPUTERS (JULY 1995)

The Contractor agrees that any supercomputers furnished under this contract have been manufactured in the United States.

(End of clause)

[60 FR 34471, July 3, 1995]

252.225–7012 Preference for certain domestic commodities.

As prescribed in 225.7002–3(a), use the following clause:

PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (SEPT 1997)

(a) The Contractor agrees to deliver under this contract only such of the following articles that have been grown, reprocessed, reused, or produced in the United States, its possessions, or Puerto Rico—

(1) Food;

(2) Clothing;

(3) Tents, tarpaulins, or covers;

(4) Cotton and other natural fiber products;

(5) Woven silk or woven silk blends;

(6) Spun silk yarn for cartridge cloth;

(7) Synthetic fabric, and coated synthetic fabric, including all textile fibers and yarns that are for use in such fabrics;

(8) Canvas products;

(9) Wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles); or

(10) Any item of individual equipment (Federal Supply Class 8465) manufactured from or containing such fibers, yarns, fabrics, or materials.

(b) This clause does not apply—

(1) To supplies listed in FAR section 25.108(d)(1), or other supplies for which the Government has determined that a satisfactory quality and sufficient quantity cannot be acquired as and when needed at U.S. market prices;

(2) To foods which have been manufactured or processed in the United States, its possessions, or Puerto Rico;

(3) To chemical warfare protective clothing produced in the countries listed in subsection 225.872–1 of the Defense FAR Supplement; or

(4) To purchase of fibers and yarns that are for use in synthetic fabric or coated synthetic fabric (but not the purchase of the synthetic or coated synthetic fabric itself), if such fabric is to be used as a component of an end item that is not a textile product. Examples of textile products, made in whole or in part of fabric, include—

(i) Draperies, floor coverings, furnishings, and bedding (Federal Supply Group 72, Household and Commercial Furnishings and Appliances);

(ii) Items made in whole or in part of fabric in Federal Supply Group 83, Textile/leather/furs/apparel/findings/tents/flags, or Federal Supply Group 84, Clothing, Individual Equipment and Insignia;

(iii) Upholstered seats (whether for household, office, or other use); and

(iv) Parachutes (Federal Supply Class 1670).

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 59 FR 27675, May 27, 1994; 60 FR 61601, Nov. 30, 1995; 61 FR 50455, Sept. 26, 1996; 62 FR 5780, Feb. 7, 1997; 62 FR 47154, Sept. 8, 1997]

252.225–7013 [Reserved]

252.225–7014 Preference for domestic specialty metals.

As prescribed in 225.7002–3(b), use the following clause:

PREFERENCE FOR DOMESTIC SPECIALTY METALS (FEB 1997)

(a) Definition.

Specialty metals means—

(1) Steel—

(i) Where the maximum alloy content exceeds one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or

(ii) Which contains more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium;

(2) Metal alloys consisting of nickel, iron-nickel, and cobalt base alloys containing a total of other alloying metals (except iron) in excess of ten percent;

(3) Titanium and titanium alloys; or

(4) Zirconium and zirconium base alloys.

(b) The Contractor agrees that any specialty metals incorporated in articles delivered under this contract will be melted in the United States, its possessions, or Puerto Rico.

(c) This clause does not apply to the extent that—

(1) The Secretary or designee determines that a satisfactory quality and sufficient quantity of such articles cannot be acquired when needed at U.S. market prices;

(2) The acquisition is for an end product of a country listed in subsection 225.872–1 of the Defense Federal Acquisition Regulation Supplement;

(3) The acquisition is necessary to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources to offset sales made by the U.S. Government or U.S. firms under approved programs; or

(4) The specialty metal is purchased by a subcontractor at any tier.

(End of clause)

ALTERNATE I (FEB 1997)

As prescribed in 225.7002–3(b), substitute the following paragraph (c) for paragraph (c) of the basic clause, and add the following paragraph (d) to the basic clause:

(c) This clause does not apply to the extent that—

(1) The Secretary or designee determines that a satisfactory quality and sufficient quantity of such articles cannot be acquired when needed at U.S. market prices;

(2) The acquisition is for an end product of a country listed in subsection 225.872–1 of the Defense Federal Acquisition Regulation Supplement; or

(3) The acquisition is necessary to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources to offset sales made by the U.S. Government or U.S. firms under approved programs.

(d) The Contractor agrees to include the terms of this clause, including this paragraph (d), in every subcontract or purchase order awarded under this contract unless the item being purchased contains no specialty metals.

[56 FR 36479, July 31, 1991, as amended at 60 FR 61602, Nov. 30, 1995; 61 FR 50455, Sept. 26, 1996; 62 FR 5780, Feb. 7, 1997]

252.225–7015 Preference for domestic hand or measuring tools.

As prescribed in 225.7002–3(c), use the following clause:

PREFERENCE FOR DOMESTIC HAND OR MEASURING TOOLS (DEC. 1991)

The Contractor agrees to deliver under this contract only hand or measuring tools produced in the United States or its possessions.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 59 FR 27675, May 27, 1994; 61 FR 50455, Sept. 26, 1996]

252.225–7016 Restriction on acquisition of ball and roller bearings.

As prescribed in 225.7019–4, use the following clause:

RESTRICTION ON ACQUISITION OF BALL AND ROLLER BEARINGS (JUN 1997)

(a) *Definitions.*

As used in this clause—

(1) ''Bearing components'' means the bearing element, retainer, inner race, or outer race.

(2) ''Miniature and instrument ball bearings'' means all rolling contact ball bearings with a basic outside diameter (exclusive of flange diameters) of 30 millimeters or less, regardless of material, tolerance, performance, or quality characteristics.

(b) The Contractor agrees that, except as provided in paragraph (c) of this clause, all ball and roller bearings and ball and roller bearing components (including miniature and instrument ball bearings) delivered under this contract, either as end items or components of end items, shall be wholly manufactured in the United States or Canada. Unless otherwise specified, raw materials, such as performed bar, tube, or rod stock and lubricants, need not be mined or produced in the United States or Canada.

(c)(1) The restriction in paragraph (b) of this clause does not apply to the extent that—

(i) The end items or components containing ball or roller bearings are commercial items; or

(ii) The ball or roller bearings are commercial items manufactured in a qualifying country listed in subsection 225.872–1 of the Defense Federal Acquisition Regulation Supplement.

(2) The commercial item exception in paragraph (c)(1) of this clause does not include items designed or developed under a Government contract or contracts where the end item is bearings and bearing components.

(d) The restriction in paragraph (b) of this clause may be waived upon request from the Contractor in accordance with subsection 225.7019–3 of the Defense Federal Acquisition Regulation Supplement. If the restriction is waived for miniature and instrument ball bearings, the Contractor agrees to acquire a like quantity and type of domestic manufacture for nongovernmental use.

(e) The Contractor agrees to retain records showing compliance with this restriction until 3 years after final payment and to make records available upon request of the Contracting Office.

(f) The Contractor agrees to insert this clause, including this paragraph (f), in every subcontract and purchase order issued in performance of this contract, unless items acquired are—

(1) Commercial items other than ball or roller bearings; or

(2) Items that do not contain ball or roller bearings.

(End of clause)

[61 FR 50455, Sept. 26, 1996, as amended at 62 FR 34131, June 24, 1997]

252.225–7017 [Reserved]

252.225–7018 Notice of prohibition of certain contracts with foreign entities for the conduct of Ballistic Missile Defense RDT&E.

As prescribed in 225.7011–5, use the following provision:

NOTICE OF PROHIBITION OF CERTAIN CONTRACTS WITH FOREIGN ENTITIES FOR THE CONDUCT OF BALLISTIC MISSILE DEFENSE RDT.E (JAN 1997)

(a) Definitions.

(1) *Competent* means the ability of an offeror to satisfy the requirements of the solicitation. This determination is based on a comprehensive assessment of each offeror's proposal including consideration of the specific areas of evaluation criteria in the relative order of importance described in the solicitation.

(2) *Foreign firm* means a business entity owned or controlled by one or more foreign nationals or a business entity in which more than 50 percent of the stock is owned or controlled by one or more foreign nationals.

(3) *U.S. firm* means a business entity other than a foreign firm.

(b) This provision implements section 222 of the Defense Authorization Act for FYs 1988 and 1989 (Pub. L. 100–180) prohibiting the award of certain contracts, for the conduct of Ballistic Missile Defense (BMD) Program research, development, test, or evaluation (RDT&E), to foreign governments or firms.

(c) Except as provided in paragraph (d) of this provision, any funds appropriated to, or for the use of, the DoD, may not be used to enter into or carry out any contract, including any contract awarded as a result of a broad agency announcement (BAA), with a foreign government or firm if the contract provides for the conduct of RDT&E in connection with the BMD. Foreign governments and firms, however, are encouraged to submit offers since this provision is not intended to restrict BMD access to unique foreign expertise when contract performance requires a level of competency unavailable in the United States.

(d) The prohibition does not apply to a foreign government or firm if—

(1) The contract will be performed within the United States;

(2) The contract is exclusively for RDT&E in connection with antitactical ballistic missile systems;

(3) The foreign government or firm agrees to share a substantial portion of the total contract cost. The foreign share is considered substantial where it is equitable with respect to the relative benefits to be derived from the contract by the United States and the foreign parties. For example, if the contract is more beneficial to the foreign party, its share of the costs should be correspondingly higher; or

(4) The U.S. Government determines that the contract cannot be competently performed by a U.S. firm at a price equal to or less than the price at which the RDT&E can be performed by a foreign government or firm.

(e) The offeror (_____) is (_____) is not a U.S. firm.

(End of provision)

[56 FR 36479, July 31, 1991, as amended at 59 FR 27675, May 27, 1994; 62 FR 2614, Jan. 17, 1997]

252.225–7019 Restriction on acquisition of foreign anchor and mooring chain.

As prescribed in 225.7012–3, use the following clause:

RESTRICTION ON ACQUISITION OF FOREIGN ANCHOR AND MOORING CHAIN (DEC. 1991)

(a) Welded shipboard anchor and mooring chain, four inches in diameter and under, delivered under this contract—

(1) Shall be manufactured in the United States, including cutting, heat treating, quality control, testing, and welding (both forging and shot blasting process); and

(2) The cost of the components manufactured in the United States shall exceed 50 percent of the total cost of components.

(b) The Contractor may request a waiver of this restriction if adequate domestic supplies meeting the above requirements are not available to meet the contract delivery schedule.

(c) The Contractor shall include this clause, including this paragraph (c), in all subcontracts, unless the items acquired contain none of the restricted welded shipboard anchor and mooring chain.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 61 FR 13108, Mar. 26, 1996]

252.225–7020—252.225–7021 [Reserved]

252.225–7022 Restriction on acquisition of polyacrylonitrile (PAN) carbon fiber.

As prescribed in 225.7103–3, use the following clause:

RESTRICTION ON ACQUISITION OF POLYACRYLONITRILE (PAN) CARBON FIBER (JUNE 1997)

(a) This clause applies only if the end product furnished under this contract contains polyacrylonitrile carbon fibers (alternatively referred to as PAN-based carbon fibers or PAN-based graphite fibers).

(b) PAN carbon fibers contained in the end product shall be manufactured in the United States or Canada using PAN precursor produced in the United States or Canada.

(c) The Contracting Officer may waive the requirement in paragraph (b) of this clause in whole or in part. The Contractor may request a waiver from the Contracting Officer by identifying the circumstances and including a plan to qualify U.S. or Canadian sources expeditiously.

(End of clause)

[62 FR 34131, June 24, 1997]

252.225–7023 [Reserved]

252.225–7024 Restriction on acquisition of night vision image intensifier tubes and devices.

As prescribed in 225.7015–3, use the following clause:

RESTRICTION ON ACQUISITION OF NIGHT VISION IMAGE INTENSIFIER TUBES AND DEVICES (DEC. 1991)

All second and third generation night vision image intensifier tubes and devices provided under this contract shall be manufactured in the United States or Canada.

(End of clause)

252.225–7025 Restriction on acquisition of forgings.

As prescribed in 225.7102–4, use the following clause:

RESTRICTION ON ACQUISITION OF FORGINGS (JUNE 1997)

(a) *Definitions.* As used in this clause—

(1) ''Domestic manufacture'' means manufactured in the United States or Canada if the Canadian firm—

(i) Normally produces similar items or is currently producing the item in support of DoD contracts (as prime or subcontractor); and

(ii) Agrees to become (upon receiving a contract/order) a planned producer under DoD's Industrial Preparedness Production Planning Program, if it is not already a planned producer for the item.

(2) ''Forging items'' means—

Items	Categories
Ship propulsion shafts	Excludes service and landing craft shafts.
Periscope tubes	All.
Ring forgings for bull gears	All greater than 120 inches in diameter.

(b) The Contractor agrees that end items and their components delivered under this contract shall contain forging items that are of domestic manufacture only.

(c) The restriction in paragraph (b) of this clause may be waived upon request from the Contractor in accordance with subsection 225.7102–3 of the Defense Federal Acquisition Regulation Supplement.

(d) The Contractor agrees to retain records showing compliance with this restriction until 3 years after final payment and to make records available upon request of the Contracting Officer.

(e) The Contractor agrees to insert this clause, including this paragraph (e), in subcontracts and purchase orders issued in performance of this contract, when products purchased contain restricted forging items.

(End of clause)

[62 FR 34131, June 24, 1997]

252.225–7026 Reporting of contract performance outside the United States.

As prescribed in 225.7203, use the following clause:

REPORTING OF CONTRACT PERFORMANCE OUTSIDE THE UNITED STATES (NOV 1995)

(a) *Reporting criteria.* Reporting under this clause is required for—

(1) Offers exceeding $10 million, if the Offeror is aware at the time the offer is submitted that it or its first-tier subcontractor intends to perform any part of the contract that exceeds $500,000 outside the United States and Canada, if that part could be performed inside the United States or Canada;

(2) Contracts exceeding $10 million, when any part that exceeds $500,000 could be performed inside the United States or Canada, but will be performed outside the United States and Canada. If the information was submitted with the offer, it need not be resubmitted unless it changes; and

(3) Contracts exceeding $500,000, when any part that exceeds $25,000 will be performed outside the United States, unless a foreign place of performance is—

(i) The principal place of performance; and

(ii) Indicated by the Offeror's entry in the Place of Performance provision of the solicitation.

(b) *Submission of reports.* (1) The Offeror shall submit reports required by paragraph (a)(1) of this clause with its offer.

(2) The Contractor shall submit reports required by paragraph (a)(2) of this clause to the Contracting Officer as soon as the information is known, with a copy to the addressee in paragraph (b)(3) of this clause. With respect to performance by a first-tier subcontractor, this information shall be reported, to the maximum extent practicable, at least 30 days before award of the subcontract.

(3) The Contractor shall submit reports required by paragraph (a)(3) of this clause within 10 days of the end of each Government quarter to—Deputy Director of Defense Procurement (Foreign Contracting) OUSD(A&T)DP(FC) Washington, DC 20301–3060

(4) The Offeror/Contractor shall submit reports on DD Form 2139, Report of Contract Performance Outside the United States. Computer-generated reports are acceptable, provided the report contains all information required by DD Form 2139. Copies of DD Form 2139 may be obtained from the Contracting Officer.

(c) *Flowdown requirements.* (1) The Contractor shall include a clause substantially the same as this one in all first-tier subcontracts exceeding $100,000, except subcontracts for commercial items, construction, ores, natural gases, utilities, petroleum products and crudes, timber (logs), or subsistence.

(2) The Contractor shall provide the prime contract number to subcontractors for reporting purposes.

(d) *Information required.* Information to be reported on the part of this contract performed outside the United States (or outside the United States and Canada for reports required by paragraphs (a)(1) and (a)(2) of this clause) includes that for—

(i) Subcontracts;

(ii) Purchases; and

(iii) Intracompany transfers when transfers originate in a foreign location.

(End of clause)

[58 FR 28474, May 13, 1993, as amended at 60 FR 29502, June 5, 1995; 60 FR 61602, Nov. 30, 1995]

252.225–7027 Restriction on contingent fees for foreign military sales.

As prescribed in 225.7308(a), use the following clause. Insert in paragraph (b) of the clause the name(s) of any foreign country customer(s) listed in 225.7303–4(b).

RESTRICTION ON CONTINGENT FEES FOR FOREIGN MILITARY SALES (JAN 1997)

Contingent fees, as defined in the Covenant Against Contingent Fees clause of this contract, are not an allowable cost, and the contract price (including any subcontracts) shall not include any direct or indirect cost of contingent fees for Contractor (or subcontractor) sales representatives for solicitation or promotion or otherwise to secure the conclusion of the sale of any of the supplies or services called for by this contract, unless—

(a) The amount of contingent fee per foreign military sale does not exceed $50,000; and

(b) For sales to the Government(s) of _____, the contingent fees have been identified and payment approved in writing by the named Government(s) before contract award.

(End of clause)

[62 FR 2617, Jan. 17, 1997]

252.225–7028 Exclusionary policies and practices of foreign governments.

As prescribed in 225.7308(b), use the following clause:

EXCLUSIONARY POLICIES AND PRACTICES OF FOREIGN GOVERNMENTS (DEC. 1991)

No person, partnership, corporation, or other entity performing functions pursuant to this contract, shall, in employing or assigning personnel to participate in the performance of any such function, whether in the United States or abroad, take into account the exclusionary policies or practices

of any foreign government where such policies or practices are based on race, religion, national origin, or sex.

(End of clause)

252.225–7029 Preference for United States or Canadian air circuit breakers.

As prescribed in 225.7016–4, use the following clause:

PREFERENCE FOR UNITED STATES OR CANADIAN AIR CIRCUIT BREAKERS (JUNE 1997)

(a) Unless otherwise specified in this offer, the Contractor agrees that air circuit breakers for naval vessels provided under this contract shall be manufactured in the United States or a qualifying country listed in subsection 225.872–1 of the Defense Federal Acquisition Regulation Supplement (DFARS).

(b) Unless an exception applies or a waiver is granted under 225.7005(b)(1) of the DFARS, preference will be given to air circuit breakers manufactured in the United States or Canada by adding 50 percent for evaluation purposes to the offered price of all other air circuit breakers, except air circuit breakers manufactured in a qualifying country.

(End of clause)

[62 FR 34131, June 24, 1997]

252.225–7030 Restriction on acquisition of carbon, alloy, and armor steel plate.

As prescribed in 225.7017–4, use the following clause:

RESTRICTION ON ACQUISITION OF CARBON, ALLOY, AND ARMOR STEEL PLATE (OCT. 1992)

The Contractor agrees that all carbon, alloy, and armor steel plate in Federal supply class 9515, or described by American Society for Testing Materials (ASTM) or American Iron and Steel Institute (AISI) specifications, furnished as a deliverable under this contract, or purchased by the contractor as a raw material, for use in a Government-owned facility or a facility under the control of the Department of Defense, shall be melted and rolled in the United States or Canada.

(End of clause)

[57 FR 53601, Nov. 12, 1992]

252.225–7031 Secondary Arab boycott of Israel.

As prescribed in 225.770–5, use the following clause:

SECONDARY ARAB BOYCOTT OF ISRAEL (JUN. 1992)

(a) *Definitions.*

As used in this clause—

Foreign person means any person other than a United States person as defined in section 16(2) of the Export Administration Act of 1979 (50 U.S.C. App. Sec 2415).

United States person is defined in section 16(2) of the Export Administration Act of 1979 and means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern), and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations of the President.

(b) *Certification.* By submitting this offer, the Offeror, if a foreign person, company or entity, certifies that it—

(1) Does not comply with the Secondary Arab Boycott of Israel; and

(2) Is not taking or knowingly agreeing to take any action, with respect to the Secondary Boycott of Israel by Arab countries, which 50 U.S.C. App. Sec. 2407(a) prohibits a United States person from taking.

(End of clause)

[57 FR 29041, June 30, 1992, as amended at 59 FR 27675, May 27, 1994]

252.225–7032 Waiver of United Kingdom levies.

As prescribed in 225.873–3, use the following clause:

WAIVER OF UNITED KINGDOM LEVIES (OCT. 1992)

(a) Offered prices for contracts and subcontracts with United Kingdom (U.K.) firms may contain commercial exploitation levies assessed by the Government of the U.K. The Offeror shall identify to the Contracting Officer all levies included in the offered price by describing—

(1) The name of the U.K. firm;

(2) The item to which the levy applies and quantity; and

(3) The amount of levy plus any associated indirect costs and profit or fee.

(b) If, after award of the prime contract, the Contractor contemplates award of a subcontract over $1 million to a U.K. firm, the Contractor shall identify any levy before award of the subcontract and shall provide the following information to the Contracting Officer—

(1) Name of the U.K. firm;

(2) Prime contract number;

(3) Description of item to which levy applies:

(4) Quantity being acquired; and

(5) Amount of levy plus any associated indirect costs and profit or fee.

(c) The Offeror/Contractor should obtain assistance in identifying the levy from the U.K. firm. In the event of difficulty, the Offeror/Contractor may seek advice through Director of Procurement, United Kingdom Defence Procurement Office, British Embassy, 3100 Massachusetts Avenue, NW, Washington, DC 20006.

(d) The U.S. Government may attempt to obtain a waiver of levies pursuant to the U.S./U.K. reciprocal waiver agreement of July 1987.

(1) Where levies are waived before contract award, the offer will be evaluated without the levy.

(2) Where levies are identified but not waived before contract award, the offer will be evaluated inclusive of the levies.

(3) Where a waiver of the levy is obtained after award, the U.S. Government reserves the right to reduce the contract price by the amount of the levy waived plus associated indirect costs, profit or fee.

(e) The Contractor agrees to insert the substance of this clause, including this paragraph (e), in any subcontract for supplies where a lower tier subcontract over $1 million with a U.K. firm is anticipated.

(End of clause)

[57 FR 53602, Nov. 12, 1992]

252.225–7033 Restriction on acquisition of four ton dolly jacks.

As prescribed in 225.7018–3, use the following clause:

RESTRICTION ON ACQUISITION OF FOUR TON DOLLY JACKS (APR. 1993)

Four ton dolly jacks delivered under this contract shall be manufactured in the United States unless a waiver is granted in accordance with subsection 225.7018–2 of the Defense Federal Acquisition Regulation Supplement.

(End of clause)

[58 FR 28474, May 13, 1993]

§ 252.225–7034 [Reserved]

252.225–7035 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate.

As prescribed in 225.408(a)(3), use the following provision:

BUY AMERICAN ACT—NORTH AMERICAN FREE TRADE AGREEMENT IMPLEMENTATION ACT—BALANCE OF PAYMENTS PROGRAM CERTIFICATE (MAY 1995)

(a) *Definitions.*

Domestic end product, qualifying country end product, and *U.S. made end product* have the meanings given in the North American Free Trade Agreement Implementation Act or Buy American Act and Balance of Payments Program clauses of this solicitation.

(b) *Evaluation.* Offers will be evaluated by giving preference to U.S. made end products, qualifying country end products, or NAFTA country end products over other end products.

(c) *Certifications.* (1) The Offeror certifies that—

(i) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product (as defined in the Buy American Act and Balance of Payments Program clause of this solicitation); and

(ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The Offeror must identify and certify all end products that are not domestic end products.

(i) The Offeror certifies that the following supplies qualify as ''U.S. made end products'' but do not meet the definition of ''domestic end product'': *(insert line item number).*

(ii) The Offeror certifies that the following supplies are qualifying country (except Canada) end products:

(iii) The Offeror certifies that the following supplies qualify as NAFTA country end products: *(insert line item number (insert country of origin).*

(iv) The Offeror certifies that the following supplies are other non-NAFTA country end products: *(insert line item number) (insert country of origin).*

(End of provision)

[59 FR 1291, Jan. 10, 1994, as amended at 60 FR 29502, June 5, 1995]

252.225–7036 North American Free Trade Agreement Implementation Act.

As prescribed in 225.408(a)(4), use the following clause:

NORTH AMERICAN FREE TRADE AGREEMENT IMPLEMENTATION ACT (JAN. 1994)

(a) *Definitions.*

(1) *Components, domestic end product, end product, nonqualifying country, qualifying country,* and *qualifying country end product*

have the meanings given in the Buy American Act and Balance of Payments Program clause of this contract.

(2) *North American Free Trade Agreement (NAFTA) country* means Canada or Mexico.

(3) *NAFTA country end product* means an article that—

(i) Is wholly the growth, product, or manufacture of a NAFTA country; or

(ii) Has, in the case of an article which consists in whole or in part of materials from another country or instrumentality, been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself. It does not include service contracts as such.

(4) *Non-NAFTA country end product* means any end product which is not a U.S. made end product or a NAFTA country end product.

(5) *United States* means the United States, its designated possessions, Puerto Rico, and any other place subject to its jurisdiction, but does not include leased bases or trust territories.

(6) *U.S. made end product* means an article which is—

(i) Wholly the growth, product or manufacture of the United States, or

(ii) In the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in the United States into a new and distinct article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

(b) This clause implements the North American Free Trade Agreement Implementation Act of 1993 by providing a preference for U.S. made end products and NAFTA country end products over non-NAFTA country end products, except non-NAFTA country end products which are qualifying country end products.

(c) The Contractor agrees to deliver under this contract only U.S. made end products unless, in its offer, it specified delivery of qualifying country, NAFTA country, or non-NAFTA country end products in the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate provision. An offer certifying that a qualifying country end product or a NAFTA country end product will be supplied requires the Contractor to supply a qualifying country end product or a NAFTA country end product, whichever is certified, or, at the Contractor's option, a U.S. made end produce.

(d) The offered price of end products listed and certified under paragraphs (c)(2)(i) and (iv) of the Buy American Act—North American Free Trade Agreement Implementation Act-Balance of Payments Program Certificate provision of the solicitation must include all applicable duty. The offered price of qualifying country end products or NAFTA country end products for line items subject to the North American Free Trade Agreement Implementation Act, should not include custom fees or duty.

ALTERNATE I (MAY 1995)

As prescribed in 225.408(a)(4)(B)(ii), add the following paragraph (a)(7) to the basic clause, and substitute the following paragraph (c) in place of paragraph (c) of the basic clause:

(a)(7) ''Canadian end product,'' means an article that—

(i) Is wholly the growth, product, or manufacturer of Canada; or

(ii) Has, in the case of an article which consists in whole or in part of materials from another country or instrumentality, been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such.

(c) The Contractor agrees to deliver under this contract only U.S. made end products unless, in its offer, it specified delivery of qualifying country, NAFTA country, or non-NAFTA country end products in the Buy American Act-North American Free Trade Agreement Implementation Act-Balance of Payments Program Certificate provision. An offer certifying that a qualifying country end product or a Canadian end product will be supplied requires the Contractor to supply a qualifying country end product or a Canadian end product, whichever is certified, or, at the Contractor's option, a U.S. made end product.

(End of clause)

[59 FR 1291, Jan. 10, 1994, as amended at 60 FR 29502, June 5, 1995]

252.225–7037 Duty-free entry—NAFTA country end products and supplies.

As prescribed in 225.605–70(c), use the following clause:

DUTY-FREE ENTRY—NAFTA COUNTRY END PRODUCTS AND SUPPLIES (JAN 1997)

(a) *Definitions.*

NAFTA country and *NAFTA country end products* have the meaning given in the North American Free Trade Agreement Implementation Act clause of this contract.

(b) The requirements of this clause apply to this contract and subcontracts, including purchase orders, that involve supplies to be accorded duty-free entry whether—

(1) Placed directly with a foreign concern as a prime contract; or

(2) As a subcontract or purchase order under a contract placed with a domestic concern.

(c) Except as otherwise approved by the Contracting Officer, no amount is or will be included in the contract price for duty for NAFTA country end products.

(d) The Contractor warrants that—

(1) All NAFTA country supplies, for which duty-free entry is to be claimed, are intended to be delivered to the Government; and

(2) The Contractor will pay duty to the extent that such supplies, or any portion thereof (if not scrap or salvage) are diverted to nongovernmental use, other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer.

(e) The Government agrees to execute duty-free entry certificates and to afford such assistance as appropriate to obtain the duty-free entry of NAFTA country supplies for which the shipping documents bear the notation specified in paragraph (f) of this clause, except as the Contractor may otherwise agree.

(f) All shipping documents submitted to Customs, covering foreign end products or supplies for which duty-free entry certificates are to be issued under this clause, shall—

(1) Consign the shipments to the appropriate—

(i) Military department in care of the Contractor, including the Contractor's delivery address; or

(ii) Military installation; and

(2) Include the following information—

(i) Prime contract number, and delivery order if applicable;

(ii) Number of the subcontract/purchase order for foreign supplies if applicable;

(iii) Identification of carrier;

(iv) The notation: *United States Government, Department of Defense Duty-Free Entry* to be claimed pursuant to Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States. Upon arrival of shipment at the appropriate port of entry, District Director of Customs, please release shipment under 19 CFR part 142, and notify Commander, Defense Contract Management Area Operations (DCMAO) New York, ATTN: Customs Team, DCMDN–GNIC, 207 New York Avenue, Staten Island, New York 10305-5013, for execution of Customs Forms 7501, 7501A, or 7506 and any required duty-free entry certificates. (Note: This notation shall be used only for direct shipments to a U.S. military installation. In cases where the shipment will be consigned to other than a military installation, e.g., a domestic contractor's plant, the shipping document notation shall be altered to insert the name and address of the contractor, agent or broker who will notify Commander, DCMAO, NY, for execution of the duty-free certificate.)

(v) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight);

(vi) Estimated value in U.S. dollars; and

(vii) Activity Address Number of the contract administration office actually administering the prime contract, e.g., for DCMAO Dayton, DLA8DP.

(g) *Prepartion of customs forms.*

(1) Except for shipments consigned to a military installation, the contractor shall prepare, or authorize an agent to prepare, any customs forms required for the entry of foreign supplies in connection with DoD contracts into the United States, its possessions, or Puerto Rico, Submit the completed customs forms to the District Director of Customs with a copy to DCMAO NY for execution of any required duty-free entry certificates. Shipments consigned directly to a military installation will be released in accordance with 10.101 and 10.102 of the U.S. Customs regulations.

(2) For shipments containing both supplies which are to be accorded duty-free entry and supplies which are not, the Contractor shall identify on the customs forms those items that are eligible for duty-free entry.

(h) The Contractor agrees—

(1) To prepare (if this contract is placed directly with a foreign supplier), or to instruct the foreign supplier to prepare, a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry:

(2) To consign the shipment as specified in paragraph (f) of this clause; and

(3) To mark the exterior of all packages as follows:

(i) ''United States Government, Department of Defense;'' and

(ii) The activity address number of the contract administration office actually administering the prime contract.

(i) The Contractor agrees to notify the Contracting Officer administering the prime contract in writing of any purchase under the contract of NAFTA country supplies to be accorded duty-free entry that are to be imported into the United States for delivery to the Government or for incorporation in

end items to be delivered to the Government. The notice shall be furnished to the contract administration office immediately upon award to the qualifying country supplier. The notice shall contain—

(1) Prime contractor's name, address, and CAGE code;

(2) Prime contract number, and delivery order number if applicable;

(3) Total dollar value of the prime contract or delivery order;

(4) Expiration date of the prime contract or delivery order;

(5) Foreign supplier's name and address;

(6) Number of the subcontract/purchase order for NAFTA supplies;

(7) Total dollar value of the subcontract for NAFTA supplies;

(8) Expiration date of the subcontract for NAFTA supplies;

(9) List of items purchased;

(10) An agreement by the Contractor that duty shall be paid by the Contractor to the extent that such supplies, or any portion (if not scrap or salvage), are diverted to nongovernmental use other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer; and

(11) The scheduled delivery date(s).

(j) This clause does not apply to purchases of NAFTA country supplies in connection with this contract if—

(1) The NAFTA country supplies are identical in nature to supplies purchased by the Contractor or any subcontractor in connection with its commercial business; and

(2) It is not economical or feasible to account for such supplies so as to ensure that the amount of the supplies for which duty-free entry is claimed does not exceed the amount purchased in connection with this contract.

(k) The Contractor agrees to insert the substance of this clause, including this paragraph (k) in all subcontracts for supplies. Each subcontract shall require the subcontractor to identify this contract by including its contract number on any shipping documents submitted to Customs covering supplies for which duty-free entry is to be claimed pursuant to this clause. The Contractor also agrees that the name and address of the Contracting Officer administering the prime contract (name and address of the contract administration office cognizant of the prime contract), and its activity address number (Appendix G of the Defense FAR Supplement), and the information required by paragraphs (i) (1), (2), and (3) of this clause will be included in applicable subcontracts.

(End of clause)

[59 FR 1292, Jan. 10, 1994; 59 FR 8041, Feb. 17, 1994, as amended at 60 FR 29503, June 5, 1995; 62 FR 2614, Jan. 17, 1997]

252.225–7038 Restriction on acquisition of aircraft fuel cells.

As prescribed in 225.7021–3, use the following clause:

RESTRICTION ON ACQUISITION OF AIRCRAFT FUEL CELLS (FEB. 1994)

The Contractor agrees that all aircraft fuel cells furnished under this contract have been manufactured in the United States by a domestic-operated entity.

(End of clause)

[59 FR 11729, Mar. 14, 1994; 59 FR 38931, Aug. 1, 1994]

252.225–7039 Restriction on Acquisition of totally enclosed lifeboat survival systems.

As prescribed in 225.7022–4, use the following clause:

RESTRICTION ON ACQUISITION OF TOTALLY ENCLOSED LIFEBOAT SURVIVAL SYSTEMS (APR 1996)

For totally enclosed lifeboat survival systems furnished under this contract, which consist of lifeboat and associated davits and winches, the Contractor agrees that—

(a) 50 percent or more of the components have been manufactured in the United States, and

(b) 50 percent or more of the labor in the manufacture and assembly of the entire system has been performed in the United States.

(End of clause)

[59 FR 19146, Apr. 22, 1994, as amended at 61 FR 13108, Mar. 26, 1996]

252.225–7040 [Reserved]

252.225–7041 Correspondence in English.

As prescribed in 225.971, use the following clause:

CORRESPONDENCE IN ENGLISH (JUNE 1997)

The Contractor shall ensure that all contract correspondence that is addressed to the United States Government is submitted in English or with an English translation.

(End of clause)

[62 FR 34132, June 24, 1997]

252.225–7042 Authorization to perform.

As prescribed in 225.97, use the following clause:

AUTHORIZATION TO PERFORM (JUNE 1997)

The Contractor represents that it has been duly authorized to operate and to do business in the country or countries in which this contract is to be performed. The Contractor also represents that it will fully comply with all laws, decrees, labor standards, and regulations of such country or countries, during the performance of this contract.

(End of clause)

[62 FR 34132, June 24, 1997]

252.226–7000 Notice of historically black college or university and minority institution set-aside.

As prescribed in 226.7008(a), use the following clause:

NOTICE OF HISTORICALLY BLACK COLLEGE OR UNIVERSITY AND MINORITY INSTITUTION SET-ASIDE (APR. 1994)

(a) *Definitions. Historically black colleges and universities,* as used in this clause, means institutions determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. The term also means any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

Minority institutions, as used in this clause, means institutions meeting the requirements of section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d–5(3)). The term also includes Hispanic-serving institutions as defined in section 316(b)(1) of such Act (20 U.S.C. 1059c(b)(1)).

(b) *General.* (1) Offers are solicited only from historically black colleges or universities and minority institutions.

(2) Any award resulting from this solicitation will be made only to an offeror which is a historically black college or university or a minority institution at the time of submission of its initial offer including price.

(c) *Agreements.* The offeror will—

(1) Perform at least 50 percent of the cost of contract performance incurred for personnel with its own employees; and

(2) Upon request by the Contracting Officer, provide evidence prior to award that the Secretary of Education has determined the offeror to be a historically black college or university or minority institution.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 59 FR 22131, Apr. 29, 1994]

252.226–7001 Historically Black College or University and Minority Institution Status.

As prescribed in 226.7008(b), use the following provision:

HISTORICALLY BLACK COLLEGE OR UNIVERSITY AND MINORITY INSTITUTION STATUS (JAN 1997)

(a) *Definitions. Historically black colleges and universities,* as used in this provision, means institutions determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. The term also means any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

Minority institutions, as used in this provision, means institutions meeting the requirements of section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d–5(3)). The term also includes Hispanic-serving institutions as defined in section 316(b)(1) of such Act (20 U.S.C. 1059c(b)(1)).

(b) *Status.*

If applicable, the offeror shall check the appropriate space below:

_____A historically black college or university

_____A minority institution

(End of provision)

[56 FR 36479, July 31, 1991, as amended at 59 FR 22131, Apr. 29, 1994; 62 FR 2614, Jan. 17, 1997]

252.227–7000 Non-estoppel.

As prescribed at 227.7009–1, insert the following clause in patent releases, license agreements, and assignments:

NON-ESTOPPEL (OCT. 1966)

The Government reserves the right at any time to contest the enforceability, validity, scope of, or the title to any patent or patent application herein licensed without waiving or forfeiting any right under this contract.

(End of clause)

252.227–7001 Release of past infringement.

As prescribed at 227.7009–2(a), insert the following clause in patent releases, license agreements, and assignments:

RELEASE OF PAST INFRINGEMENT (AUG. 1984)

The Contractor hereby releases each and every claim and demand which he now has or may hereafter have against the Government for the manufacture or use by or for the Government prior to the effective date of this contract, of any inventions covered by (i) any of the patents and applications for patent identified in this contract, and (ii) any other patent or application for patent owned or hereafter acquired by him, insofar as and only to the extent that such other patent or patent application covers the manufacture, use, or disposition of (description of subject matter).*

(End of clause)

252.227–7002 Readjustment of payments.

As prescribed at 227.7009–2(b), insert the following clause in patent releases, license agreements, and assignments:

READJUSTMENT OF PAYMENTS (OCT. 1966)

(a) If any license, under substantially the same patents and authorizing substantially the same acts which are authorized under this contract, has been or shall hereafter be granted within the United States, on royalty terms which are more favorable to the licensee than those contained herein, the Government shall be entitled to the benefit of such more favorable terms with respect to all royalties accruing under this contract after the date such more favorable terms become effective, and the Contractor shall promptly notify the Secretary in writing of the granting of such more favorable terms.

(b) In the event any claim of any patent hereby licensed is construed or held invalid by decision of a court of competent jurisdiction, the requirement to pay royalties under this contract insofar as its arises solely by reason of such claim, and any other claim not materially different therefrom, shall be interpreted in conformity with the court's decision as to the scope of validity of such claims; *Provided*, however, that in the event such decision is modified or reversed on appeal, the requirement to pay royalties under this contract shall be interpreted in conformity with the final decision rendered on such appeal.

*Bracketed portions of the clause may be omitted when not appropriate or not encompassed by the release as negotiated.

(End of clause)

252.227–7003 Termination.

As prescribed at 227.7009–2(c), insert the following clause in patent releases, license agreements, and assignments:

TERMINATION (AUG. 1984)

Notwithstanding any other provision of this contract, the Government shall have the right to terminate the within license, in whole or in part, by giving the Contractor not less than thirty (30) days notice in writing of the date such termination is to be effective; provided, however, that such termination shall not affect the obligation of the Government to pay royalties which have accrued prior to the effective date of such termination.

(End of clause)

252.227–7004 License grant.

As prescribed at 227.7009–3(a), insert the following clause in patent releases, license agreements, and assignments:

LICENSE GRANT (AUG. 1984)

(a) The Contractor hereby grants to the Government an irrevocable, nonexclusive, nontransferable, and paid up license under the following patents, applications for patent, and any patents granted on such applications, and under any patents which may issue as the result of any reissue, division or continuation thereof, to practice by or cause to be practiced for the Government throughout the world, any and all of the inventions thereunder, in the manufacture and use of any article or material, in the use of any method or process, and in the disposition of any article or material in accordance with law:

U.S. Patent No. _____

Date _____

Application Serial No. _____

Filing Date _____

together with corresponding foreign patents and foreign applications for patents, insofar as the Contractor has the right to grant licenses thereunder without incurring an obligation to pay royalties or other compensation to others solely on account of such grant.

(b) No rights are granted or implied by the agreement under any other patents other than as provided above or by operation of law.

(c) Nothing contained herein shall limit any rights which the Government may have

obtained by virtue of prior contracts or by operation of law or otherwise.

(End of clause)

252.227–7005 License term.

As prescribed at 227.7009–3(b), insert one of the following clauses in patent releases, license agreements, and assignments:

LICENSE TERM (AUG. 1984)

ALTERNATE I (AUG. 1984)

The license hereby granted shall remain in full force and effect for the full term of each of the patents referred to in the ''License Grant'' clause of this contract and any and all patents hereafter issued on applications for patent referred to in such ''License Grant'' clause.

ALTERNATE II (AUG. 1984)

The license hereby granted shall terminate on the _____ day of _____ 19_____; *Provided*, however, that said termination shall be without prejudice to the completion of any contract entered into by the Government prior to said date of termination or to the use or disposition thereafter of any articles or materials manufactured by or for the Government under this license.

252.227–7006 License grant—running royalty.

As prescribed at 227.7009–4(a), insert the following clause in patent releases, license agreements, and assignments:

LICENSE GRANT—RUNNING ROYALTY (AUG. 1984)

(a) The Contractor hereby grants to the Government, as represented by the Secretary of _____, an irrevocable, nonexclusive, nontransferable license under the following patents, applications for patent, and any patents granted on such applications, and under any patents which may issue as the result of any reissue, division, or continuation thereunder to practice by or cause to be practiced for the Department of _____, throughout the world, any and all of the inventions thereunder in the manufacture and use of any article or material, in the use of any method or process, and in the disposition of any article or material in accordance with law:

U.S. Patent No. _____
Date _____
Application Serial No. _____
Filing Date _____

together with corresponding foreign patents and foreign applications for patent, insofar as the Contractor has the right to grant licenses thereunder without incurring an obligation to pay royalties or other compensation to others solely on account of such grant.

(b) No rights are granted or implied by the agreement under any other patents other than as provided above or by operation of law.

(c) Nothing contained herein shall limit any rights which the Government may have obtained by virtue of prior contracts or by operation of law or otherwise.

(End of clause)

252.227–7007 License term—running royalty.

As prescribed at 227.7009–4(b), insert the following clause in patent releases, license agreements, and assignments:

LICENSE TERM—RUNNING ROYALTY (AUG. 1984)

The license hereby granted shall remain in full force and effect for the full term of each of the patents referred to in the ''License Grant'' clause of this contract and any and all patents hereafter issued on applications for patent referred to above unless sooner terminated as elsewhere herein provided.

(End of clause)

252.227–7008 Computation of royalties.

As prescribed at 227.7009–4(c), insert the following clause in patent releases, license agreements, and assignments:

COMPUTATION OF ROYALTIES (AUG. 1984)

Subject to the conditions hereinafter stated, royalties shall accrue to the Contractor under this agreement on all articles or materials embodying, or manufactured by the use of, any or all inventions claimed under any unexpired United States patent licensed herein, upon acceptance thereof by the Department of _____, at the rate of _____ percent of the net selling price of such articles or materials (amount) per (name of item)* whether manufactured by the Government or procured under a fixed price contract, and at the rate of (amount) per (name of item) acquired or manufactured by a Contractor performing under a cost-reimbursement contract. With respect to such articles or materials made by the Department of _____, ''net selling price,'' as used in this paragraph, means the actual cost of direct labor and materials without allowance for overhead and supervision.

*Use bracketed matter as appropriate.

(End of clause)

252.227–7009 Reporting and payment of royalties.

As prescribed at 227.7009–4(d), insert the following clause in patent releases, license agreements, and assignments:

REPORTING AND PAYMENT OF ROYALTIES (AUG. 1984)

(a) The (procuring office) shall, on or before the sixtieth (60th) day next following the end of each yearly* period ending _____ during which royalties have accrued under this license, deliver to the Contractor, subject to military security regulations, a report in writing furnishing necessary information relative to royalties which have accrued under this contract.

(b) Royalties which have accrued under this contract during the yearly* period ending _____ shall be paid to the Contractor (if appropriations therefor are available or become available) within sixty (60) days next following the receipt of a voucher from the Contractor submitted in accordance with the report referred to in (a) of this clause; *Provided*, that the Government shall not be obligated to pay, in respect of any such yearly period, on account of the combined royalties accruing under this contract directly and under any separate licenses granted pursuant to the ''License to Other Government Agencies'' clause (if any) of this contract, an amount greater than _____ dollars ($_____), and if such combined royalties exceed the said maximum yearly obligation, each department or agency shall pay a pro rata share of the said maximum yearly obligation as determined by the proportion its accrued royalties bear to the combined total of accrued royalties.

(End of clause)

252.227–7010 License to other Government agencies.

As prescribed at 227.7009–4(e), insert the following clause in patent releases, license agreements, and assignments:

LICENSE TO OTHER GOVERNMENT AGENCIES (AUG. 1984)

The Contractor hereby agrees to grant a separate license under the patents, applications for patents, and improvements referred to in the ''License Grant'' clause of this contract, on the same terms and conditions as appear in this license contract, to any other department or agency of the Government at any time on receipt of a written request for such a license from such department or agency; *Provided*, however, that as to royalties which accrue under such separate licenses, reports and payments shall be made directly to the Contractor by each such other department or agency pursuant to the terms of such separate licenses. The Contractor shall notify the Licensee hereunder promptly upon receipt of any request for license hereunder.

(End of clause)

252.227–7011 Assignments.

As prescribed at 227.7010, insert the following clause in assignments.

ASSIGNMENT (AUG. 1984)

The Contractor hereby conveys to the Government, as represented by the Secretary of _____, the entire right, title, and interest in and to the following patents (and applications for patent), in and to the inventions thereof, and in and to all claims and demands whatsoever for infringement thereof heretofore accrued, the same to be held and enjoyed by the Government through its duly appointed representatives to the full end of the term of said patents (and to the full end of the terms of all patents which may be granted upon said applications for patent, or upon any division, continuation-in-part or continuation thereof):

U.S. Patent No. _____
Date _____
Name of Inventor _____
U.S. Application Serial No. _____
Filing Date _____
Name of Inventor _____

together with corresponding foreign patents and applications for patent insofar as the Contractor has the right to assign the same.

(End of clause)

252.227–7012 Patent license and release contract.

As prescribed at 227.7012, insert the following clause in patent releases, license agreements, and assignments:

_____(Contract No.)

PATENT LICENSE AND RELEASE CONTRACT (AUG. 1984)

THIS CONTRACT is effective as of the _____ day of _____ 19_____, between the UNITED STATES OF AMERICA (hereinafter called the Government), and _____ (hereinafter called the Contractor), (a corporation organized and existing under the laws of the State of _____), (a partnership consisting of _____), (an individual trading as _____), of the

*The frequency, date, and length of reporting periods should be selected as appropriate to the particular circumstances of the contract.

City of _____, in the State of _____.

Whereas, Contractor warrants that he has the right to grant the within license and release, and the Government desires to procure the same, and

Whereas, this contract is authorized by law, including 10 U.S.C. 2386.

Now Therefore, in consideration of the grant, release and agreements hereinafter recited, the parties have agreed as follows:

Article 1. License Grant.*

(Insert the clause at 252.227–7004 for a paid up license, or the clause at 252.227–7006 for a license on a running royalty basis.)

Article 2. License Term.*

(Insert the appropriate alternative clause at 252.227–7005 for a paid up license, or the clause at 252.227–7007 for a license on a running royalty basis.)

Article 3. Release of Past Infringement.

(Insert the clause at 252.227–7001.)

Article 4. Non-Estoppel.

(Insert the clause at 252.227–7000.)

Article 5. Payment.

The Contractor shall be paid the sum of _____ Dollars ($_____) in full compensation for the rights herein granted and agreed to be granted. (For a license on a running royalty basis, insert the clause at 252.227–7006 in accordance with the instructions therein, and also the clause as specified at 252.227–7002 and 252.227–7009 and 252.227–7010.)

Article 6. Officials Not to Benefit.

(Insert the clause at FAR 52.203–1.)

Article 7. Covenant Against Contingent Fees.

(Insert the clause at FAR 52.203–5.)

Article 8. Assignment of Claims.

(Insert the clause at FAR 52.232–23.)

Article 9. Gratuities.

(Insert the clause at FAR 52.203–3.)

Article 10. Disputes.

(Insert the clause at FAR 52.233–1.)

Article 11. Successors and Assignees.

This Agreement shall be binding upon the Contractor, his successors** and assignees, but nothing contained in this Article shall authorize an assignment of any claim against the Government otherwise than as permitted by law.

In Witness Whereof, the parties hereto have executed this contract.

THE UNITED STATES OF AMERICA

By _____

Date _____

(Signature and Title of Contractor) _____

By _____

Date _____

(End of clause)

*If only a release is procured, delete this article; if an assignment is procured, use the clause at 252.227–7011.

**When the Contractor is an individual, change ''successors'' to ''heirs''; if a partnership, modify appropriately.

252.227–7013 Rights in technical data—Noncommercial items.

As prescribed in 227.7103–6(a), use the following clause:

RIGHTS IN TECHNICAL DATA—NONCOMMERCIAL ITEMS (NOV 1995)

(a) *Definitions.* As used in this clause:

(1) *Computer data base* means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.

(2) *Computer program* means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

(3) *Computer software* means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer data bases or computer software documentation.

(4) *Computer software documentation* means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

(5) *Detailed manufacturing or process data* means technical data that describe the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.

(6) *Developed* means that an item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component, or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered ''developed,'' the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component, or process be actually reduced to practice within the

meaning of Title 35 of the United States Code.

(7) *Developed exclusively at private expense* means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a government contract, or any combination thereof.

(i) Private expense determinations should be made at the lowest practicable level.

(ii) Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at government, private, or mixed expense.

(8) *Developed exclusively with government funds* means development was not accomplished exclusively or partially at private expense.

(9) *Developed with mixed funding* means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a government contract, and partially with costs charged directly to a government contract.

(10) *Form, fit, and function data* means technical data that describes the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

(11) *Government purpose* means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data for commercial purposes or authorize others to do so.

(12) *Government purpose rights* means the rights to—

(i) Use, modify, reproduce, release, perform, display, or disclose technical data within the Government without restriction; and

(ii) Release or disclose technical data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for United States government purposes.

(13) *Limited rights* means the rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party, except that the Government may reproduce, release or disclose such data or authorize the use or reproduction of the data by persons outside the Government if reproduction, release, disclosure, or use is—

(i) Necessary for emergency repair and overhaul; or

(ii) A release or disclosure of technical data (other than detailed manufacturing or process data) to, or use of such data by, a foreign government that is in the interest of the Government and is required for evaluational or informational purposes;

(iii) Subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data; and

(iv) The contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

(14) *Technical data* means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

(15) *Unlimited rights* means rights to use, modify, reproduce, perform, display, release, or disclose technical data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

(b) *Rights in technical data.* The Contractor grants or shall obtain for the Government the following royalty free, world-wide, nonexclusive, irrevocable license rights in technical data other than computer software documentation (see the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause of this contract for rights in computer software documentation):

(1) *Unlimited rights.* The Government shall have unlimited rights in technical data that are—

(i) Data pertaining to an item, component, or process which has been or will be developed exclusively with Government funds;

(ii) Studies, analyses, test data, or similar data produced for this contract, when the study, analysis, test, or similar work was specified as an element of performance;

(iii) Created exclusively with Government funds in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes;

(iv) Form, fit, and function data;

(v) Necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);

(vi) Corrections or changes to technical data furnished to the Contractor by the Government;

(vii) Otherwise publicly available or have been released or disclosed by the Contractor or subcontractor without restrictions on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(viii) Data in which the Government has obtained unlimited rights under another Government contract or as a result of negotiations; or

(ix) Data furnished to the Government, under this or any other Government contract or subcontract thereunder, with—

(A) Government purpose license rights or limited rights and the restrictive condition(s) has/have expired; or

(B) Government purpose rights and the Contractor's exclusive right to use such data for commercial purposes has expired.

(2) *Government purpose rights.* (i) The Government shall have government purpose rights for a five-year period, or such other period as may be negotiated, in technical data—

(A) That pertain to items, components, or processes developed with mixed funding except when the Government is entitled to unlimited rights in such data as provided in paragraphs (b)(ii) and (b)(iv) through (b)(ix) of this clause; or

(B) Created with mixed funding in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.

(ii) The five-year period, or such other period as may have been negotiated, shall commence upon execution of the contract, subcontract, letter contract (or similar contractual instrument), contract modification, or option exercise that required development of the items, components, or processes or creation of the data described in paragraph (b)(2)(i)(B) of this clause. Upon expiration of the five-year or other negotiated period, the Government shall have unlimited rights in the technical data.

(iii) The Government shall not release or disclose technical data in which it has government purpose rights unless—

(A) Prior to release or disclosure, the intended recipient is subject to the non-disclosure agreement at 227.7103–7 of the Defense Federal Acquisition Regulation Supplement (DFARS); or

(B) The recipient is a Government contractor receiving access to the data for performance of a Government contract that contains the clause at DFARS 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(iv) The Contractor has the exclusive right, including the right to license others, to use technical data in which the Government has obtained government purpose rights under this contract for any commercial purpose during the time period specified in the government purpose rights legend prescribed in paragraph (f)(2) of this clause.

(3) *Limited rights.* (i) Except as provided in paragraphs (b)(1)(ii) and (b)(1)(iv) through (b)(1)(ix) of this clause, the Government shall have limited rights in technical data—

(A) Pertaining to items, components, or processes developed exclusively at private expense and marked with the limited rights legend prescribed in paragraph (f) of this clause; or

(B) Created exclusively at private expense in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.

(ii) The Government shall require a recipient of limited rights data for emergency repair or overhaul to destroy the data and all copies in its possession promptly following completion of the emergency repair/overhaul and to notify the Contractor that the data have been destroyed.

(iii) The Contractor, its subcontractors, and suppliers are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose technical data furnished to the Government with limited rights. However, if the Government desires to obtain additional rights in technical data in which it has limited rights, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All technical data in which the Contractor has granted the Government additional rights shall be listed or described in a license agreement made part of the contract. The license shall enumerate the additional rights granted the Government in such data.

(4) *Specifically negotiated license rights.* The standard license rights granted to the Government under paragraphs (b)(1) through (b)(3) of this clause, including the period during which the Government shall have government purpose rights in technical data, may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights than are enumerated in paragraph (a)(13) of this clause. Any rights so negotiated shall be identified in a license agreement made part of this contract.

(5) *Prior government rights.* Technical data that will be delivered, furnished, or otherwise provided to the Government under this contract, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the pre-existing rights, unless—

(i) The parties have agreed otherwise; or

(ii) Any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.

(6) *Release from liability.* The Contractor agrees to release the Government from liability for any release or disclosure of technical data made in accordance with paragraph (a)(13) or (b)(2)(iii) of this clause, in accordance with the terms of a license negotiated under paragraph (b)(4) of this clause, or by others to whom the recipient has released or disclosed the data and to seek relief solely from the party who has improperly used, modified, reproduced, released, performed, displayed, or disclosed Contractor data marked with restrictive legends.

(c) *Contractor rights in technical data.* All rights not granted to the Government are retained by the Contractor.

(d) *Third party copyrighted data.* The Contractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted data in the technical data to be delivered under this contract unless the Contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable data of the appropriate scope set forth in paragraph (b) of this clause, and has affixed a statement of the license or licenses obtained on behalf of the Government and other persons to the data transmittal document.

(e) *Identification and delivery of data to be furnished with restrictions on use, release, or disclosure.* (1) This paragraph does not apply to restrictions based solely on copyright.

(2) Except as provided in paragraph (e)(3) of this clause, technical data that the Contractor asserts should be furnished to the Government with restrictions on use, release, or disclosure are identified in an attachment to this contract (the Attachment). The Contractor shall not deliver any data with restrictive markings unless the data are listed on the Attachment.

(3) In addition to the assertions made in the Attachment, other assertions may be identified after award when based on new information or inadvertent omissions unless the inadvertent omissions would have materially affected the source selection decision. Such identification and assertion shall be submitted to the Contracting Officer as soon as practicable prior to the scheduled date for delivery of the data, in the following format, and signed by an official authorized to contractually obligate the Contractor: Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Technical Data.

The Contractor asserts for itself, or the persons identified below, that the Government's rights to use, release, or disclose the following technical data should be restricted—

Technical data to be furnished with restrictions [1]	Basis for assertion [2]	Asserted rights category [3]	Name of person asserting restrictions [4]
(LIST)	(LIST)	(LIST)	(LIST)

[1] If the assertion is applicable to items, components or processes developed at private expense, identify both the data and each such item, component, or process.

[2] Generally, the development of an item, component, or process at private expense, either exclusively or partially, is the only basis for asserting restrictions on the Government's rights to use, release, or disclose technical data pertaining to such items, components, or processes. Indicate whether development was exclusively or partially at private expense. If development was not at private expense, enter the specific reason for asserting that the Government's rights should be restricted.

[3] Enter asserted rights category (e.g., government purpose license rights from a prior contract, rights in SBIR data generated under another contract, limited or government purpose rights under this or a prior contract, or specifically negotiated licenses).

[4] Corporation, individual, or other person, as appropriate.

Date _____

Printed Name and Title _____

_____

Signature _____

(End of identification and assertion)

(4) When requested by the Contracting Officer, the Contractor shall provide sufficient information to enable the Contracting Officer to evaluate the Contractor's assertions. The Contracting Officer reserves the right to add the Contractor's assertions to the Attachment and validate any listed assertion, at a later date, in accordance with the procedures of the Validation of Restrictive Markings on Technical Data clause of this contract.

(f) *Marking requirements.* The Contractor, and its subcontractors or suppliers, may only assert restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data to be delivered under this contract by marking the deliverable data subject to restriction. Except as provided in paragraph (f)(5) of this clause, only the following legends are authorized under this contract: the government purpose rights legend at paragraph (f)(2) of this clause; the limited rights legend at paragraph (f)(3) of this clause; or the special license rights legend at paragraph (f)(4) of this clause; and/or a notice of copyright as prescribed under 17 U.S.C. 401 or 402.

(1) *General marking instructions.* The Contractor, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate legend on all technical data that qualify for such markings. The authorized legends shall be placed on the transmittal document or storage container and, for printed material, each page of the printed material containing technical data for which restrictions are asserted. When only portions of a page of printed material are subject to the asserted restrictions, such portions shall

be identified by circling, underscoring, with a note, or other appropriate identifier. Technical data transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. Reproductions of technical data or any portions thereof subject to asserted restrictions shall also reproduce the asserted restrictions.

(2) *Government purpose rights markings.* Data delivered or otherwise furnished to the Government purpose rights shall be marked as follows:

Government Purpose Rights

Contract No. _____

Contractor Name _____

Contractor Address _____

_____

Expiration Date _____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (b)(2) of the Rights in Technical Data—Noncommercial Items clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(3) *Limited rights markings.* Data delivered or otherwise furnished to the Government with limited rights shall be marked with the following legend:

Limited Rights

Contract No. _____

Contractor Name _____

Contractor Address _____

_____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (b)(3) of the Rights in Technical Data—Noncommercial Items clause contained in the above identified contract. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such data must promptly notify the above named Contractor.

(End of legend)

(4) *Special license rights markings.* (i) Data in which the Government's rights stem from a specifically negotiated license shall be marked with the following legend:

Special License Rights

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these data are restricted by Contract No. _____ (Insert contract number) _____, License No. _____ (Insert license identifier) _____. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(ii) For purposes of this clause, special licenses do not include government purpose license rights acquired under a prior contract (see paragraph (b)(5) of this clause).

(5) *Pre-existing data markings.* If the terms of a prior contract or license permitted the Contractor to restrict the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data deliverable under this contract, and those restrictions are still applicable, the Contractor may mark such data with the appropriate restrictive legend for which the data qualified under the prior contract or license. The marking procedures in paragraph (f)(1) of this clause shall be followed.

(g) *Contractor procedures and records.* Throughout performance of this contract, the Contractor and its subcontractors or suppliers that will deliver technical data with other than unlimited rights, shall—

(1) Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this clause; and

(2) Maintain records sufficient to justify the validity of any restrictive markings on technical data delivered under this contract.

(h) *Removal of unjustified and nonconforming markings.* (1) *Unjustified technical data markings.* The rights and obligations of the parties regarding the validation of restrictive markings on technical data furnished or to be furnished under this contract are contained in the Validation of Restrictive Markings on Technical Data clause of this contract. Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may ignore or, at the Contractor's expense, correct or strike a marking if, in accordance with the procedures in the Validation of Restrictive Markings on Technical Data clause of this contract, a restrictive marking is determined to be unjustified.

(2) *Nonconforming technical data markings.* A nonconforming marking is a marking placed on technical data delivered or otherwise furnished to the Government under this contract that is not in the format authorized by this contract. Correction of nonconforming markings is not subject to the Validation of Restrictive Markings on Technical Data clause of this contract. If the Contracting

Officer notifies the Contractor of a nonconforming marking and the Contractor fails to remove or correct such marking within sixty (60) days, the Government may ignore or, at the Contractor's expense, remove or correct any nonconforming marking.

(i) *Relation to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(j) *Limitation on charges for rights in technical data.* (1) The Contractor shall not charge to this contract any cost, including, but not limited to, license fees, royalties, or similar charges, for rights in technical data to be delivered under this contract when—

(i) The Government has acquired, by any means, the same or greater rights in the data; or

(ii) The data are available to the public without restrictions.

(2) The limitation in paragraph (j)(1) of this clause—

(i) Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the Contractor to acquire rights in subcontractor or supplier technical data, if the subcontractor or supplier has been paid for such rights under any other Government contract or under a license conveying the rights to the Government; and

(ii) Does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the technical data will be delivered.

(k) *Applicability to subcontractors or suppliers.* (1) The Contractor shall ensure that the rights afforded its subcontractors and suppliers under 10 U.S.C. 2320, 10 U.S.C. 2321, and the identification, assertion, and delivery processes of paragraph (e) of this clause are recognized and protected.

(2) Whenever any technical data for noncommercial items is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in the subcontract or other contractual instrument, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. No other clause shall be used to enlarge or diminish the Government's, the Contractor's, or a higher-tier subcontractor's or supplier's rights in a subcontractor's or supplier's technical data.

(3) Technical data required to be delivered by a subcontractor or supplier shall normally be delivered to the next higher-tier contractor, subcontractor, or supplier. However, when there is a requirement in the prime contract for data which may be submitted with other than unlimited rights by a subcontractor or supplier, then said subcontractor or supplier may fulfill its requirement by submitting such data directly to the Government, rather than through a higher-tier contractor, subcontractor, or supplier.

(4) The Contractor and higher-tier subcontractors or suppliers shall not use their power to award contracts as economic leverage to obtain rights in technical data from their subcontractors or suppliers.

(5) In no event shall the Contractor use its obligation to recognize and protect subcontractor or supplier rights in technical data as an excuse for failing to satisfy its contractual obligations to the Government.

(End of clause)

ALTERNATE I (JUNE 1995)

As prescribed in 227.7103–6(b), add the following paragraph (l) to the basic clause:

(l) *Publication for sale.* (1) This paragraph only applies to technical data in which the Government has obtained unlimited rights or a license to make an unrestricted release of technical data.

(2) The Government shall not publish a deliverable technical data item or items identified in this contract as being subject to paragraph (l) of this clause or authorize others to publish such data on its behalf if, prior to publication for sale by the Government and within twenty-four (24) months following the date specified in this contract for delivery of such data or the removal of any national security or export control restrictions, whichever is later, the Contractor publishes that item or items for sale and promptly notifies the Contracting Officer of such publication(s). Any such publication shall include a notice identifying the number of this contract and the Government's rights in the published data.

(3) This limitation on the Government's right to publish for sale shall continue as long as the data are reasonably available to the public for purchase.

[60 FR 33490, June 28, 1995, as amended at 60 FR 61602, Nov. 30, 1995]

252.227–7014 Rights in noncommercial computer software and noncommercial computer software documentation.

As prescribed in 227.7203–6(a)(1), use the following clause.

RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NONCOMMERCIAL COMPUTER SOFTWARE DOCUMENTATION (JUNE 1995)

(a) *Definitions.* As used in this clause:

(1) *Commercial computer software* means software developed or regularly used for nongovernmental purposes which—

(i) Has been sold, leased, or licensed to the public;

(ii) Has been offered for sale, lease, or license to the public;

(iii) Has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this contract; or

(iv) Satisfies a criterion expressed in paragraph (a)(1) (i), (ii), or (iii) of this clause and would require only minor modification to meet the requirements of this contract.

(2) *Computer database* means a collection of recorded data in a form capable of being processed by a computer. The term does not include computer software.

(3) *Computer program* means a set of instructions, rules, or routines, recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

(4) *Computer software* means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer databases or computer software documentation.

(5) *Computer software documentation* means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

(6) *Developed* means that—

(i) A computer program has been successfully operated in a computer and tested to the extent sufficient to demonstrate to reasonable persons skilled in the art that the program can reasonably be expected to perform its intended purpose;

(ii) Computer software, other than computer programs, has been tested or analyzed to the extent sufficient to demonstrate to reasonable persons skilled in the art that the software can reasonably be expected to perform its intended purpose; or

(iii) Computer software documentation required to be delivered under a contract has been written, in any medium, in sufficient detail to comply with requirements under that contract.

(7) *Developed exclusively at private expense* means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a government contract, or any combination thereof.

(i) Private expense determinations should be made at the lowest practicable level.

(ii) Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at government, private, or mixed expense.

(8) *Developed exclusively with government funds* means development was not accomplished exclusively or partially at private expense.

(9) *Developed with mixed funding* means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a government contract, and partially with costs charged directly to a government contract.

(10) *Government purpose* means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation for commercial purposes or authorize others to do so.

(11) *Government purpose rights* means the rights to—

(i) Use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation within the Government without restriction; and

(ii) Release or disclose computer software or computer software documentation outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose the software or documentation for United States government purposes.

(12) *Minor modification* means a modification that does not significantly alter the nongovernmental function or purpose of the software or is of the type customarily provided in the commercial marketplace.

(13) *Noncommercial computer software* means software that does not qualify as commercial computer software under paragraph (a)(1) of this clause.

(14) *Restricted rights* apply only to noncommercial computer software and mean the Government's rights to—

(i) Use a computer program with one computer at one time. The program may not be accessed by more than one terminal or central processing unit or time shared unless otherwise permitted by this contract;

(ii) Transfer a computer program to another Government agency without the further permission of the Contractor if the transferor destroys all copies of the program and related computer software documentation in its possession and notifies the licensor of the transfer. Transferred programs remain subject to the provisions of this clause;

(iii) Make the minimum number of copies of the computer software required for safekeeping (archive), backup, or modification purposes;

(iv) Modify computer software provided that the Government may—

(A) Use the modified software only as provided in paragraphs (a)(14) (i) and (iii) of this clause; and

(B) Not release or disclose the modified software except as provided in paragraphs (a)(14) (ii), (v) and (vi) of this clause;

(v) Permit contractors or subcontractors performing service contracts (see 37.101 of the Federal Acquisition Regulation) in support of this or a related contract to use computer software to diagnose and correct deficiencies in a computer program, to modify computer software to enable a computer program to be combined with, adapted to, or merged with other computer programs or when necessary to respond to urgent tactical situations, provided that—

(A) The Government notifies the party which has granted restricted rights that a release or disclosure to particular contractors or subcontractors was made;

(B) Such contractors or subcontractors are subject to the use and non-disclosure agreement at 227.7103–7 of the Defense Federal Acquisition Regulation Supplement (DFARS) or are Government contractors receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;

(C) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(14)(iv) of this clause, for any other purpose; and

(D) Such use is subject to the limitation in paragraph (a)(14)(i) of this clause; and

(vi) Permit contractors or subcontractors performing emergency repairs or overhaul of items or components of items procured under this or a related contract to use the computer software when necessary to perform the repairs or overhaul, or to modify the computer software to reflect the repairs or overhaul made, provided that—

(A) The intended recipient is subject to the use and non-disclosure agreement at DFARS 227.7103–7 or is a Government contractor receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends; and

(B) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(14)(iv) of this clause, for any other purpose.

(15) *Unlimited rights* means rights to use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation in whole or in part, in any manner and for any purpose whatsoever, and to have or authorize others to do so.

(b) *Rights in computer software or computer software documentation.* The Contractor grants or shall obtain for the Government the following royalty free, world-wide, nonexclusive, irrevocable license rights in noncommercial computer software or computer software documentation. All rights not granted to the Government are retained by the Contractor.

(1) *Unlimited rights.* The Government shall have unlimited rights in—

(i) Computer software developed exclusively with Government funds;

(ii) Computer software documentation required to be delivered under this contract;

(iii) Corrections or changes to computer software or computer software documentation furnished to the Contractor by the Government;

(iv) Computer software or computer software documentation that is otherwise publicly available or has been released or disclosed by the Contractor or subcontractor without restriction on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the software to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(v) Computer software or computer software documentation obtained with unlimited rights under another Government contract or as a result of negotiations; or

(vi) Computer software or computer software documentation furnished to the Government, under this or any other Government contract or subcontract thereunder with—

(A) Restricted rights in computer software, limited rights in technical data, or government purpose license rights and the restrictive conditions have expired; or

(B) Government purpose rights and the Contractor's exclusive right to use such software or documentation for commercial purposes has expired.

(2) *Government purpose rights.* (i) Except as provided in paragraph (b)(1) of this clause, the Government shall have government purpose rights in computer software development with mixed funding.

(ii) Government purpose rights shall remain in effect for a period of five years unless a different period has been negotiated. Upon expiration of the five-year or other negotiated period, the Government shall have unlimited rights in the computer software or

computer software documentation. The government purpose rights period shall commence upon execution of the contract, subcontract, letter contract (or similar contractual instrument), contract modification, or option exercise that required development of the computer software.

(iii) The Government shall not release or disclose computer software in which it has government purpose rights to any other person unless—

(A) Prior to release or disclosure, the intended recipient is subject to the use and non-disclosure agreement at DFARS 227.7103–7; or

(B) The recipient is a Government contractor receiving access to the software or documentation for performance of a Government contract that contains the clause at DFARS 252.227–7025, Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends.

(3) *Restricted rights.* (i) The Government shall have restricted rights in noncommercial computer software required to be delivered or otherwise provided to the Government under this contract that were developed exclusively at private expense.

(ii) The Contractor, its subcontractors, or suppliers are not required to provide the Government additional rights in noncommercial computer software delivered or otherwise provided to the Government with restricted rights. However, if the Government desires to obtain additional rights in such software, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All noncommercial computer software in which the Contractor has granted the Government additional rights shall be listed or described in a license agreement made part of the contract (see paragraph (b)(4) of this clause). The license shall enumerate the additional rights granted the Government.

(4) *Specifically negotiated license rights.* (i) The standard license rights granted to the Government under paragraphs (b)(1) through (b)(3) of this clause, including the period during which the Government shall have government purpose rights in computer software, may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights in computer software than are enumerated in paragraph (a)(14) of this clause or lesser rights in computer software documentation than are enumerated in paragraph (a)(13) of the Rights in Technical Data—Noncommercial Items clause of this contract.

(ii) Any rights so negotiated shall be identified in a license agreement made part of this contract.

(5) *Prior government rights.* Computer software or computer software documentation that will be delivered, furnished, or otherwise provided to the Government under this contract, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the pre-existing rights, unless—

(i) The parties have agreed otherwise; or

(ii) Any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.

(6) *Release from liability.* The Contractor agrees to release the Government from liability for any release or disclosure of computer software made in accordance with paragraph (a)(14) or (b)(2)(iii) of this clause, in accordance with the terms of a license negotiated under paragraph (b)(4) of this clause, or by others to whom the recipient has released or disclosed the software, and to seek relief solely from the party who has improperly used, modified, reproduced, released, performed, displayed, or disclosed Contractor software marked with restrictive legends.

(c) *Rights in derivative computer software or computer software documentation.* The Government shall retain its rights in the unchanged portions of any computer software or computer software documentation delivered under this contract that the Contractor uses to prepare, or includes in, derivative computer software or computer software documentation.

(d) *Third party copyrighted computer software or computer software documentation.* The Contractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted computer software or computer software documentation in the software or documentation to be delivered under this contract unless the Contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable software or documentation of the appropriate scope set forth in paragraph (b) of this clause, and prior to delivery of such—

(1) Computer software, has provided a statement of the license rights obtained in a form acceptable to the Contracting Officer; or

(2) Computer software documentation, has affixed to the transmittal document a statement of the license rights obtained.

(e) *Identification and delivery of computer software and computer software documentation to be furnished with restrictions on use, release, or disclosure.* (1) This paragraph does not apply to restrictions based solely on copyright.

(2) Except as provided in paragraph (e)(3) of this clause, computer software that the Contractor asserts should be furnished to the

Government with restrictions on use, release, or disclosure is identified in an attachment to this contract (the Attachment). The Contractor shall not deliver any software with restrictive markings unless the software is listed on the Attachment.

(3) In addition to the assertions made in the Attachment, other assertions may be identified after award when based on new information or inadvertent omissions unless the inadvertent omissions would have materially affected the source selection decision. Such identification and assertion shall be submitted to the Contracting Officer as soon as practicable prior to the scheduled data for delivery of the software, in the following format, and signed by an official authorized to contractually obligate the Contractor: Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Computer Software.

The Contractor asserts for itself, or the persons identified below, that the Government's rights to use, release, or disclose the following computer software should be restricted:

Computer Software to be Furnished With Restrictions*	Basis for Assertion**	Asserted Rights Category***	Name of Person Asserting Restrictions****
(LIST)	(LIST)	(LIST)	(LIST)

*Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions on the Government's rights to use, release, or disclose computer software.

**Indicate whether development was exclusively or partially at private expense. If development was not at private expense, enter the specific reason for asserting that the Government's rights should be restricted.

***Enter asserted rights category (e.g., restricted or government purpose rights in computer software, government purpose license rights from a prior contract, rights in SBIR software generated under another contract, or specifically negotiated licenses).

****Corporation, individual, or other person, as appropriate.

Date _____

Printed Name and Title _____

_____

Signature _____

(End of identification and assertion)

(4) When requested by the Contracting Officer, the Contractor shall provide sufficient information to enable the Contracting Officer to evaluate the Contractor's assertions. The Contracting Officer reserves the right to add the Contractor's assertions to the Attachment and validate any listed assertion, at a later date, in accordance with the procedures of the Validation of Asserted Restrictions—Computer Software clause of this contract.

(f) *Marking requirements.* The Contractor, and its subcontractors or suppliers, may only assert restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose computer software by marking the deliverable software or documentation subject to restriction. Except as provided in paragraph (f)(5) of this clause, only the following legends are authorized under this contract; the government purpose rights legend at paragraph (f)(2) of this clause; the restricted rights legend at paragraph (f)(3) of this clause; or the special license rights legend at paragraph (f)(4) of this clause; and/or a notice of copyright as prescribed under 17 U.S.C. 401 or 402.

(1) *General marking instructions.* The Contractor, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate legend on all computer software that qualify for such markings. The authorized legends shall be placed on the transmitted document or software storage container and each page, or portions thereof, of printed material containing computer software for which restrictions are asserted. Computer software transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. However, instructions that interfere with or delay the operation of computer software in order to display a restrictive rights legend or other license statement at any time prior to or during use of the computer software, or otherwise cause such interference or delay, shall not be inserted in software that will or might be used in combat or situations that simulate combat conditions, unless the Contracting Officer's written permission to deliver such software has been obtained prior to delivery. Reproductions of computer software or any portions thereof subject to asserted restrictions, shall also reproduce the asserted restrictions.

(2) *Government purpose rights markings.* Computer software delivered or otherwise furnished to the Government with government purpose rights shall be marked as follows:

GOVERNMENT PURPOSE RIGHTS

Contract No. _____

Contractor Name _____

Contractor Address _____

_____

Expiration Date _____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by paragraph (b)(2) of the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of the software or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(3) *Restricted rights markings.* Software delivered or otherwise furnished to the Government with restricted rights shall be marked with the following legend:

RESTRICTED RIGHTS

Contract No. _____

Contractor Name _____

Contractor Address _____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by paragraph (b)(3) of the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause contained in the above identified contract. Any reproduction of computer software or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such software must promptly notify the above named Contractor.

(End of legend)

(4) *Special license rights markings.* (i) Computer software or computer documentation in which the Government's rights stem from a specifically negotiated license shall be marked with the following legend:

SPECIAL LICENSE RIGHTS

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by Contract No. _____(Insert contract number)_____, License No._____(Insert license identifier)_____. Any reproduction of computer software, computer software documentation, or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(ii) For purposes of this clause, special licenses do not include government purpose license rights acquired under a prior contract (see paragraph (b)(5) of this clause).

(5) *Pre-existing markings.* If the terms of a prior contract or license permitted the Contractor to restrict the Government's rights to use, modify, release, perform, display, or disclose computer software or computer software documentation and those restrictions are still applicable, the Contractor may mark such software or documentation with the appropriate restrictive legend for which the software qualified under the prior contract or license. The marking procedures in paragraph (f)(1) of this clause shall be followed.

(g) *Contractor procedures and records.* Throughout performance of this contract, the Contractor and its subcontractors or suppliers that will deliver computer software or computer software documentation with other than unlimited rights, shall—

(1) Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this clause; and

(2) Maintain records sufficient to justify the validity of any restrictive markings on computer software or computer software documentation delivered under this contract.

(h) *Removal of unjustified and nonconforming markings.* (1) *Unjustified computer software or computer software documentation markings.* The rights and obligations of the parties regarding the validation of restrictive markings on computer software or computer software documentation furnished or to be furnished under this contract are contained in the Validation of Asserted Restrictions—Computer Software and the Validation of Restrictive Markings on Technical Data clauses of this contract, respectively. Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may ignore or, at the Contractor's expense, correct or strike a marking if, in accordance with the procedures of those clauses, a restrictive marking is determined to be unjustified.

(2) *Nonconforming computer software or computer software documentation markings.* A nonconforming marking is a marking placed on computer software or computer software documentation delivered or otherwise furnished to the Government under this contract that is not in the format authorized by this contract. Correction of nonconforming markings is not subject to the Validation of Asserted Restrictions—Computer Software or the Validation of Restrictive Markings on Technical Data clause of this contract. If the Contracting Officer notifies the Contractor of a nonconforming marking or markings and the Contractor fails to remove or correct such markings within sixty (60) days, the Government may ignore or, at the Contractor's expense, remove or correct any nonconforming markings.

(i) *Relation to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(j) *Limitation on charges for rights in computer software or computer software documentation.* (1) The Contractor shall not charge to this contract any cost, including but not limited to license fees, royalties, or similar charges, for rights in computer software or computer software documentation to be delivered under this contract when—

(i) The Government has acquired, by any means, the same or greater rights in the software or documentation; or

(ii) The software or documentation are available to the public without restrictions.

(2) The limitation in paragraph (j)(1) of this clause—

(i) Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the Contractor to acquire rights in subcontractor or supplier computer software or computer software documentation, if the subcontractor or supplier has been paid for such rights under any other Government contract or under a license conveying the rights to the Government; and

(ii) Does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the software or documentation will be delivered.

(k) *Applicability to subcontractors or suppliers.* (1) Whenever any noncommercial computer software or computer software documentation is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in its subcontracts or other contractual instruments, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. No other clause shall be used to enlarge or diminish the Government's, the Contractor's, or a higher tier subcontractor's or supplier's rights in a subcontractor's or supplier's computer software or computer software documentation.

(2) The Contractor and higher tier subcontractors or suppliers shall not use their power to award contracts as economic leverage to obtain rights in computer software or computer software documentation from their subcontractors or suppliers.

(3) The Contractor shall ensure that subcontractor or supplier rights are recognized and protected in the identification, assertion, and delivery processes required by paragraph (e) of this clause.

(4) In no event shall the Contractor use its obligation to recognize and protect subcontractor or supplier rights in computer software or computer software documentation as an excuse for failing to satisfy its contractual obligation to the Government.

(End of clause)

ALTERNATE I (JUN. 1995)

As prescribed in 227.7203–6(a)(2), add the following paragraph (l) to the basic clause:

(l) *Publication for sale.* (1) This paragraph only applies to computer software or computer software documentation in which the Government has obtained unlimited rights or a license to make an unrestricted release of the software or documentation.

(2) The Government shall not publish a deliverable item or items of computer software or computer software documentation identified in this contract as being subject to paragraph (l) of this clause or authorize others to publish such software or documentation on its behalf if, prior to publication for sale by the Government and within twenty-four (24) months following the date specified in this contract for delivery of such software or documentation, or the removal of any national security or export control restrictions, whichever is later, the Contractor publishes that item or items for sale and promptly notifies the Contracting Officer of such publication(s). Any such publication shall include a notice identifying the number of this contract and the Government's rights in the published software or documentation.

(3) This limitation on the Government's rights to publish for sale shall continue as long as the software or documentation are reasonably available to the public for purchase.

[60 FR 33493, June 28, 1995]

252.227–7015 Technical data—Commercial items.

As prescribed in 227.7102–3, use the following clause:

TECHNICAL DATA—COMMERCIAL ITEMS (NOV 1995)

(a) *Definitions.* As used in this clause:

(1) *Commercial item* does not include commercial computer software.

(2) *Form, fit, and function data* means technical data that describes the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

(3) The term *item* includes components or processes.

(4) *Technical data* means recorded information, regardless of the form or method of recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

(b) *License.* (1) The Government shall have the unrestricted right to use, modify, reproduce, release, perform, display, or disclose technical data, and to permit others to do so, that—

(i) Have been provided to the Government or others without restrictions on use, modification, reproduction, release, or further disclosure other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(ii) Are form, fit, and function data;

(iii) Are a correction or change to technical data furnished to the Contractor by the Government;

(iv) Are necessary for operation, maintenance, installation, or training (other than detailed manufacturing or process data); or

(v) Have been provided to the Government under a prior contract or licensing agreement through which the Government has acquired the rights to use, modify, reproduce, release, perform, display, or disclose the data without restrictions.

(2) Except as provided in paragraph (b)(1) of this clause, the Government may use, modify, reproduce, release, perform, display, or disclose technical data within the Government only. The Government shall not—

(i) Use the technical data to manufacture additional quantities of the commercial items; or

(ii) Release, perform, display, disclose, or authorize use of the technical data outside the Government without the Contractor's written permission unless a release, disclosure or permitted use is necessary for emergency repair or overhaul of the commercial items furnished under this contract.

(c) *Additional license rights.* The Contractor, its subcontractors, and suppliers are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose technical data. However, if the Government desires to obtain additional rights in technical data, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All technical data in which the Contractor has granted the Government additional rights shall be listed or described in a special license agreement made part of this contract. The license shall enumerate the additional rights granted the Government in such data.

(d) *Release from liability.* The Contractor agrees that the Government, and other persons to whom the Government may have released or disclosed technical data delivered or otherwise furnished under this contract, shall have no liability for any release or disclosure of technical data that are not marked to indicate that such data are licensed data subject to use, modification, reproduction, release, performance, display, or disclosure restrictions.

(End of clause)

[60 FR 33497, June 28, 1995, as amended at 60 FR 61602, Nov. 30, 1995]

252.227–7016 Rights in bid or proposal information.

As prescribed in 227.7103–6(e)(1), 227.7104(e)(1), or 227.7203–6(b), use the following clause:

RIGHTS IN BID OR PROPOSAL INFORMATION (JUN. 1995)

(a) *Definitions.* (1) For contracts that require the delivery of technical data, the terms ''technical data'' and ''computer software'' are defined in the Rights in Technical Data—Noncommercial Item clause of this contract or, if this is a contract awarded under the Small Business Innovative Research Program, the Rights in Noncommercial Technical Data and Computer Software—Small Business Innovative Research (SBIR) Program clause of this contract.

(2) For contracts that do not require the delivery of technical data, the term ''computer software'' is defined in the Rights in Noncommercial Computer and Noncommercial Computer Software Documentation clause of this contract or, if this is a contract awarded under the Small Business Innovative Research Program, the Rights in Noncommercial Technical Data and Computer Software—Small Business Innovative Research (SBIR) Program clause of this contract.

(b) *Government rights to contract award.* By submission of its offer, the Offeror agrees that the Government—

(1) May reproduce the bid or proposal, or any portions thereof, to the extent necessary to evaluate the offer.

(2) Except as provided in paragraph (d) of this clause, shall use information contained in the bid or proposal only for evaluational purposes and shall not disclose, directly or indirectly, such information to any person including potential evaluators, unless that person has been authorized by the head of the agency, his or her designee, or the Contracting Officer to receive such information.

(c) *Government rights subsequent to contract award.* The Contractor agrees—

(1) Except as provided in paragraphs (c)((2), (d), and (e) of this clause, the Government shall have the rights to use, modify, reproduce, release, perform, display, or disclose information contained in the Contractor's bid or proposal within the Government. The Government shall not release, perform, display, or disclose such information outside the Government without the Contractor's written permission.

(2) The Government's right to use, modify, reproduce, release, perform, display, or disclose information that is technical data or computer software required to be delivered under this contract are determined by the Rights in Technical Data—Noncommercial Items, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, or Rights in Noncommercial Technical Data and Computer Software—Small Business Innovative Research (SBIR) Program clause(s) of this contract.

(d) *Government-furnished information.* The Government's rights with respect to technical data or computer software contained in the Contractor's bid or proposal that were provided to the Contractor by the Government are subject only to restrictions on use, modification, reproduction, release, performance, display, or disclosure, if any, imposed by the developer or licensor of such data or software.

(e) *Information available without restrictions.* The Government's rights to use, modify, reproduce, release, perform, display, or, disclose information contained in a bid or proposal, including technical data or computer software, and to permit others to do so, shall not be restricted in any manner if such information has been released or disclosed to the Government or to other persons without restrictions other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the information to another party or the sale or transfer of some or all of a business entity or its assets to another party.

(f) *Flowdown.* Contractor shall include this clause in all subcontracts or similar contractual instruments and require its subcontractors or suppliers to do so without alteration, except to identify the parties.

(End of clause)

[60 FR 33498, June 28, 1995]

252.227–7017 Identification and assertion of use, release, or disclosure restrictions.

As prescribed in 227.7103–3(b), 227.7104(e)(2), or 227.7203–3(a), use the following provision:

IDENTIFICATION AND ASSERTION OF USE, RELEASE, OR DISCLOSURE RESTRICTIONS (JUN. 1995)

(a) The terms used in this provision are defined in following clause or clauses contained in this solicitation—

(1) If a successful offeror will be required to deliver technical data, the Rights in Technical Data—Noncommercial Items clause, or, if this solicitation contemplates a contract under the Small Business Innovative Research Program, the Rights in Noncommercial Technical Data and Computer Software—Small Business Innovative Research (SBIR) Program clause.

(2) If a successful offeror will not be required to deliver technical data, the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause, or, if this solicitation contemplates a contract under the Small Business Innovative Research Program, the Rights in Noncommercial Technical Data and Computer Software—Small Business Innovative Research (SBIR) Program clause.

(b) The identification and assertion requirements in this provision apply only to technical data, including computer software documents, or computer software to be delivered with other than unlimited rights. For contracts to be awarded under the Small Business Innovative Research Program, the notification requirements do not apply to technical data or computer software that will be generated under the resulting contract. Notification and identification is not required for restrictions based solely on copyright.

(c) Offers submitted in response to this solicitation shall identify, to the extent known at the time an offer is submitted to the Government, the technical data or computer software that the Offeror, its subcontractors or suppliers, or potential subcontractors or suppliers, assert should be furnished to the Government with restrictions on use, release, or disclosure.

(d) The Offeror's assertions, including the assertions of its subcontractors or suppliers or potential subcontractors or suppliers shall be submitted as an attachment to its offer in the following format, dated and signed by an official authorized to contractually obligate the Offeror:

Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Technical Data or Computer Software

The Offeror asserts for itself, or the persons identified below, that the Government's rights to use, release, or disclose the following technical data or computer software should be restricted:

Technical Data or Computer Software to be Furnished With Restrictions*	Basis for Assertion**	Asserted Rights Category***	Name of Person Asserting Restrictions****
(LIST)*****	(LIST)	(LIST)	(LIST)

*For technical data (other than computer software documentation) pertaining to items, components, or processes developed at private expense, identify both the deliverable technical data and each such items, component, or process. For computer software or computer software documentation identify the software or documentation.

**Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions. For technical data, other than computer software documentation, development refers to development of the item, component, or process to which the data pertain. The Government's rights in computer software documentation generally may not be restricted. For computer software, development refers to the software. Indicate whether development was accomplished exclusively or partially at private expense. If development was not accomplished at private expense, or for computer software documentation, enter the specific basis for asserting restrictions.

***Enter asserted rights category (e.g., government purpose license rights from a prior contract, rights in SBIR data generated under another contract, limited, restricted, or government purpose rights under this or a prior contract, or specially negotiated licenses).
****Corporation, individual, or other person, as appropriate.
*****Enter ''none'' when all data or software will be submitted without restrictions.

Date _____

Printed Name and Title _____

_____

Signature _____

(End of identification and assertion)

(e) An offeror's failure to submit, complete, or sign the notification and identification required by paragraph (d) of this provision with its offer may render the offer ineligible for award.

(f) If the Offeror is awarded a contract, the assertions identified in paragraph (d) of this provision shall be listed in an attachment to that contract. Upon request by the Contracting Officer, the Offeror shall provide sufficient information to enable the Contracting Officer to evaluate any listed assertion.

(End of provision)

[60 FR 33498, June 28, 1994]

252.227–7018 Rights in noncommercial technical data and computer software—Small Business Innovation Research (SBIR) Program.

As prescribed in 227.7104(a), use the following clause:

RIGHTS IN NONCOMMERCIAL TECHNICAL DATA AND COMPUTER SOFTWARE—SMALL BUSINESS INNOVATION RESEARCH (SBIR) PROGRAM (JUN. 1995)

(a) *Definitions.* As used in this clause:

(1) *Commercial computer software* means software developed or regularly used for nongovernmental purposes which—

(i) Has been sold, leased, or licensed to the public;

(ii) Has been offered for sale, lease, or license to the public;

(iii) Has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this contract; or

(iv) Satisfies a criterion expressed in paragraph (a)(1)(i), (ii), or (iii) of this clause and would require only minor modification to meet the requirements of this contract.

(2) *Computer database* means a collection of recorded data in a form capable of being processed by a computer. The term does not include computer software.

(3) *Computer program* means a set of instructions, rules, or routines, recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

(4) *Computer software* means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, re-created, or recompiled. Computer software does not include computer databases or computer software documentation.

(5) *Computer software documentation* means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

(6) *Detailed manufacturing or process data* means technical data that describe the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.

(7) *Developed* means—

(i) (Applicable to technical data other than computer software documentation.) An item, component, or process, exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component, or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered ''developed,'' the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component or process be actually reduced to practice within the meaning of Title 35 of the United States Code;

(ii) A computer program has been successfully operated in a computer and tested to the extent sufficient to demonstrate to reasonable persons skilled in the art that the program can reasonably be expected to perform its intended purpose;

(iii) Computer software, other than computer programs, has been tested or analyzed to the extent sufficient to demonstrate to reasonable persons skilled in the art that the software can reasonably be expected to perform its intended purpose; or

(iv) Computer software documentation required to be delivered under a contract has been written, in any medium, in sufficient

detail to comply with requirements under that contract.

(8) *Developed exclusively at private expense* means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a government contract, or any combination thereof.

(i) Private expense determinations should be made at the lowest practicable level.

(ii) Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at government, private, or mixed expense.

(9) *Developed exclusively with government funds* means development was not accomplished exclusively or partially at private expense.

(10) *Developed with mixed funding* means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a government contract, and partially with costs charged directly to a government contract.

(11) *Form, fit, and function data* means technical data that describe the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

(12) *Generated* means technical data or computer software first created in the performance of this contract.

(13) *Government purpose* means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software for commercial purposes or authorize others to do so.

(14) *Limited rights* means the rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or permit the technical data to be used by another party, except that the Government may reproduce, release or disclose such data or permit the use or reproduction of the data by persons outside the Government if reproduction, release, disclosure, or use is—

(i) Necessary for emergency repair and overhaul; or

(ii) A release or disclosure of technical data (other than detailed manufacturing or process data) to, or use of such data by, a foreign government that is in the interest of the Government and is required for evaluational or informational purposes;

(iii) Subject to a prohibition on the further reproduction, release disclosure, or use of the technical data; and

(iv) The Contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

(15) *Minor modification* means a modification that does not significantly alter the nongovernmental function or purpose of computer software or is of the type customarily provided in the commercial marketplace.

(16) *Noncommercial computer software* means software that does not qualify as commercial computer software under paragraph (a)(1) of this clause.

(17) *Restricted rights* apply only to noncommercial computer software and mean the Government's rights to—

(i) Use a computer program with one computer at one time. The program may not be accessed by more than one terminal or central processing unit or time shared unless otherwise permitted by this contract;

(ii) Transfer a computer program to another Government agency without the further permission of the Contractor if the transferor destroys all copies of the program and related computer software documentation in its possession and notifies the licensor of the transfer. Transferred programs remain subject to the provisions of this clause;

(iii) Make the minimum number of copies of the computer software required for safekeeping (archive), backup, or modification purposes;

(iv) Modify computer software provided that the Government may—

(A) Use the modified software only as provided in paragraphs (a)(17) (i) and (iii) of this clause; and

(B) Not release or disclose the modified software except as provided in paragraphs (a)(17) (ii), (v) and (vi) of this clause;

(v) Permit contractors or subcontractors performing service contracts (see 37.101 of the Federal Acquisition Regulation) in support of this or a related contract to use computer software to diagnose and correct deficiencies in a computer program, to modify computer software to enable a computer program to be combined with, adapted to, or merged with other computer programs or when necessary to respond to urgent tactical situations, provided that—

(A) The Government notifies the party which has granted restricted rights that a release or disclosure to particular contractors or subcontractors was made;

(B) Such contractors or subcontractors are subject to the non-disclosure agreement at

227.7103–7 of the Defense Federal Acquisition Regulation Supplement (DFARS or are Government contractors receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;

(C) The Government shall not permit the recipient to decompile disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(17)(iv) of this clause, for any other purpose; and

(D) Such use is subject to the limitation in paragraph (a)(17)(i) of this clause; and

(vi) Permit contractors or subcontractors performing emergency repairs or overhaul of items or components of items, procured under this or a related contract to use the computer software when necessary to perform the repairs or overhaul, or to modify the computer software to reflect the repairs or overhaul made, provided that—

(A) The intended recipient is subject to the non-disclosure agreement at DFARS 227.7103–7 or is a Government contractor receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227–7025, Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends; and

(B) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(17)(iv) of this clause, for any other purpose.

(18) *SBIR data rights* means a royalty-free license for the Government, including its support service contractors, to use, modify, reproduce, release, perform, display, or disclose technical data or computer software generated and delivered under this contract for any United States Government purpose.

(19) *Technical data* means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

(20) *Unlimited rights* means rights to use, modify, reproduce, release, perform, display, or disclose, technical data or computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or authorize others to do so.

(b) *Rights in technical data and computer software.* The Contractor grants or shall obtain for the Government the following royalty-free, world-wide, nonexclusive, irrevocable license rights in technical data or noncommercial computer software. All rights not granted to the Government are retained by the Contractor.

(1) *Unlimited rights.* The Government shall have unlimited rights in technical data, including computer software documentation, or computer software generated under this contract that are—

(i) Form, fit, and function data;

(ii) Necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);

(iii) Corrections or changes to Government-furnished technical data or computer software;

(iv) Otherwise publicly available or have been released or disclosed by the Contractor or a subcontractor without restrictions on further use, release or disclosure other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data or computer software to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(v) Data or software in which the Government has acquired previously unlimited rights under another Government contract or through a specific license; and

(vi) SBIR data upon expiration of the SBIR data rights period.

(2) *Limited rights.* The Government shall have limited rights in technical data, that were not generated under this contract, pertain to items, components or processes developed exclusively at private expense, and are marked, in accordance with the marking instructions in paragraph (f)(1) of this clause, with the legend prescribed in paragraph (f)(2) of this clause.

(3) *Restricted rights in computer software.* The Government shall have restricted rights in noncommercial computer software required to be delivered or otherwise furnished to the Government under this contract that were developed exclusively at private expense and were not generated under this contract.

(4) *SBIR data rights.* (i) Except for technical data, including computer software documentation, or computer software in which the Government has unlimited rights under paragraph (b)(1) of this clause, the Government shall have SBIR data rights in all technical data or computer software generated under this contract during the period commencing with contract award and ending upon the date five years after completion of the project from which such data were generated.

(ii) The Government may not release or disclose SBIR data to any person, other than its support services contractors, except—

(A) As expressly permitted by the Contractor;

(B) For evaluation purposes; or

(C) A release, disclosure, or use that is necessary for emergency repair or overhaul of items operated by the Government.

(iii) A release or disclosure of SBIR data to the Government's support services contractors, or a release or disclosure under paragraph (b)(4)(ii)(B) or (C) of this clause, may be made only if, prior to release or disclosure, the intended recipient is subject to the use and non-disclosure agreement at DFARS 227.7103–7 or is a Government contractor receiving access to the technical data or software for performance of a Government contract that contains the clause at DFARS 252.227–7025, Limitations on the Use of Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(5) *Specifically negotiated license rights.* The standard license rights granted to the Government under paragraphs (b)(1) through (b)(4) of this clause may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights in technical data, including computer software documentation, than are enumerated in paragraph (a)(14) of this clause or lesser rights in computer software than are enumerated in paragraph (a)(17) of this clause. Any rights so negotiated shall be identified in a license agreement made part of this contract.

(6) *Prior government rights.* Technical data, including computer software documentation, or computer software that will be delivered, furnished, or otherwise provided to the Government under this contract, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the pre-existing rights, unless—

(i) The parties have agreed otherwise; or

(ii) Any restrictions on the Government's rights to use, modify, release, perform, display, or disclose the technical data or computer software have expired or no longer apply.

(7) *Release from liability*. The Contractor agrees to release the Government from liability for any release or disclosure of technical data, computer software, or computer software documentation made in accordance with paragraph (a)(14), (a)(17), or (b)(4) of this clause, or in accordance with the terms of a license negotiated under paragraph (b)(5) of this clause, or by others to whom the recipient has released or disclosed the data, software, or documentation and to seek relief solely from the party who has improperly used, modified, reproduced, released, performed, displayed, or disclosed Contractor data or software marked with restrictive legends.

(c) *Rights in derivative computer software or computer software documentation*. The Government shall retain its rights in the unchanged portions of any computer software or computer software documentation delivered under this contract that the Contractor uses to prepare, or includes in, derivative software or documentation.

(d) *Third party copyrighted technical data and computer software.* The Contractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted technical data, including computer software documentation, or computer software in the data or software to be delivered under this contract unless the Contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable data or software of the appropriate scope set forth in paragraph (b) of this clause and, prior to delivery of such—

(1) Technical data, has affixed to the transmittal document a statement of the license rights obtained; or

(2) Computer software, has provided a statement of the license rights obtained in a form acceptable to the Contracting Officer.

(e) *Identification and delivery of technical data or computer software to be furnished with restrictions on use, release, or disclosure.* (1) This paragraph does not apply to technical data or computer software that were or will be generated under this contract or to restrictions based solely on copyright.

(2) Except as provided in paragraph (e)(3) of this clause, technical data or computer software that the Contractor asserts should be furnished to the Government with restrictions on use, release, or disclosure is identified in an attachment to this contract (the Attachment). The Contractor shall not deliver any technical data or computer software with restrictive markings unless the technical data or computer software are listed on the Attachment.

(3) In addition to the assertions made in the Attachment, other assertions may be identified after award when based on new information or inadvertent omissions unless the inadvertent omissions would have materially affected the source selection decision. Such identification and assertion shall be submitted to the Contracting Officer as soon as practicable prior to the scheduled date for delivery of the technical data or computer software, in the following format, and signed by an official authorized to contractually obligate the Contractor:

Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Technical Data or Computer Software

The Contractor asserts for itself, or the persons identified below, that the Government's rights to use, release, or disclose the following technical data or computer software should be restricted:

Technical data or computer software to be furnished with restrictions [1]	Basis for assertion [2]	Asserted rights category [3]	Name of person asserting restrictions [4]
(LIST)	(LIST)	(LIST)	(LIST)

[1] If the assertion is applicable to items, components, or processes developed at private expense, identify both the technical data and each such item, component, or process.

[2] Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions on the Government's rights to use, release, or disclose technical data or computer software. Indicate whether development was exclusively or partially at private expense. If development was not at private expense, enter the specific reason for asserting that the Government's rights should be restricted.

[3] Enter asserted rights category (e.g., limited rights, restricted rights, government purpose rights, or government purpose license rights from a prior contract, SBIR data rights under another contract, or specifically negotiated licenses).

[4] Corporation, individual, or other person, as appropriate.

Date _____

Printed Name and Title _____

Signature _____

(End of identification and assertion)

(4) When requested by the Contracting Officer, the Contractor shall provide sufficient information to enable the Contracting Officer to evaluate the Contractor's assertions. The Contracting Officer reserves the right to add the Contractor's assertions to the Attachment and validate any listed assertions, at a later date, in accordance with the procedures of the Validation of Asserted Restrictions—Computer Software and/or Validation of Restrictive Markings on Technical Data clauses of this contract.

(f) *Marking requirements.* The Contractor, and its subcontractors or suppliers, may only assert restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software to be delivered under this contract by marking the deliverable data or software subject to restriction. Except as provided in paragraph (f)(6) of this clause, only the following markings are authorized under this contract: the limited rights legend at paragraph (f)(2) of this clause; the restricted rights legend at paragraph (f)(3) of this clause, the SBIR data rights legend at paragraph (f)(4) of this clause, or the special license rights legend at paragraphs (f)(5) of this clause; and/or a notice of copyright as prescribed under 17 U.S.C. 401 or 402.

(1) *General marking instructions.* The Contractor, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate legend to all technical data and computer software that qualify for such markings. The authorized legends shall be placed on the transmittal document or storage container and, for printed material, each page of the printed material containing technical data or computer software for which restrictions are asserted. When only portions of a page of printed material are subject to the asserted restrictions, such portions shall be identified by circling, underscoring, with a note, or other appropriate identifier. Technical data or computer software transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. However, instructions that interfere with or delay the operation of computer software in order to display a restrictive rights legend or other license statement at any time prior to or during use of the computer software, or otherwise cause such interference or delay, shall not be inserted in software that will or might be used in combat or situations that simulate combat conditions, unless the Contracting Officer's written permission to deliver such software has been obtained prior to delivery. Reproductions of technical data, computer software, or any portions thereof subject to asserted restrictions shall also reproduce the asserted restrictions.

(2) *Limited rights markings.* Technical data not generated under this contract that pertain to items, components, or processes developed exclusively at private expense and delivered or otherwise furnished with limited rights shall be marked with the following legend:

Limited Rights

Contract No. _____

Contractor Name _____

Contractor Address _____

_____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (b)(2) of the Rights in Noncommercial Technical Data and Computer Software—Small Business Innovative Research (SBIR) Program clause contained in the above identified contract. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such data must promptly notify the above named Contractor.

(End of legend)

(3) *Restricted rights markings.* Computer software delivered or otherwise furnished to the Government with restricted rights shall be marked with the following legend:

Restricted Rights

Contract No. _____

Contractor Name _____

Contractor Address _____

_____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by paragraph (b)(3) of the Rights in Noncommercial Technical Data and Computer Software—Small Business Innovative Research (SBIR) Program clause contained in the above identified contract. Any reproduction of computer software or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such data must promptly notify the above named Contractor.

(End of legend)

(4) *SBIR data rights markings:* Except for technical data or computer software in which the Government has acquired unlimited rights under paragraph (b)(1) of this clause, or negotiated special license rights as provided in paragraph (b)(5) of this clause, technical data or computer software generated under this contract shall be marked with the following legend. The Contractor shall enter the expiration date for the SBIR data rights period on the legend:

SBIR Data Rights

Contract No. _____

Contractor Name _____

Address _____

_____

Expiration of SBIR Data Rights Period ____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software marked with this legend are restricted during the period shown as provided in paragraph (b)(4) of the Rights in Noncommercial Technical Data and Computer Software—Small Business Innovative Research (SBIR) Program clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of technical data, computer software, or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(5) *Special license rights markings.* (i) Technical data or computer software in which the Government's rights stem from a specifically negotiated license shall be marked with the following legend:

Special License Rights

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this technical data or computer software are restricted by Contract No. _____ (Insert contract number) _____, License No. _____ (Insert license identifier) _____. Any reproduction of technical data, computer software, or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(ii) For purposes of this clause, special licenses do not include government purpose license rights acquired under a prior contract (see paragraph (b)(6) of this clause).

(6) *Pre-existing data markings.* If the terms of a prior contract or license permitted the Contractor to restrict the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software, and those restrictions are still applicable, the Contractor may mark such data or software with the appropriate restrictive legend for which the data or software qualified under the prior contract or license. The marking procedures in paragraph (f)(1) of this clause shall be followed.

(g) *Contractor procedures and records.* Throughout performance of this contract, the Contractor, and its subcontractors or suppliers that will deliver technical data or computer software with other than unlimited rights, shall—

(1) Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this clause; and

(2) Maintain records sufficient to justify the validity of any restrictive markings on technical data or computer software delivered under this contract.

(h) *Removal of unjustified and nonconforming markings.*

(1) *Unjustified markings.* The rights and obligations of the parties regarding the validation of restrictive markings on technical data or computer software furnished or to be furnished under this contract are contained in the Validation of Restrictive Markings on Technical Data and the Validation of Asserted Restrictions—Computer Software clauses of this contract, respectively. Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may ignore or, at the Contractor's expense, correct or strike a marking if, in accordance with the applicable procedures of those clauses, a restrictive marking is determined to be unjustified.

(2) *Nonconforming markings.* A nonconforming marking is a marking placed on technical data or computer software delivered or otherwise furnished to the Government under this contract that is not in the format authorized by this contract. Correction of nonconforming markings is not subject to the Validation of Restrictive Markings on Technical Data or the Validation of Asserted Restrictions—Computer Software clause of

this contract. If the Contracting Officer notifies the Contractor of a nonconforming marking or markings and the Contractor fails to remove or correct such markings within sixty (6)) days, the Government may ignore or, at the Contractor's expense, remove or correct any nonconforming markings.

(i) *Relation to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(j) *Limitation on charges for rights in technical data or computer software.* (1) The Contractor shall not charge to this contract any cost, including but not limited to, license fees, royalties, or similar charges, for rights in technical data or computer software to be delivered under this contract when—

(i) The Government has acquired, by any means, the same or greater rights in the data or software; or

(ii) The data are available to the public without restrictions.

(2) The limitation in paragraph (j)(1) of this clause—

(i) Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the Contractor to acquire rights in subcontractor of supplier technical data or computer software, if the subcontractor or supplier has been paid for such rights under any other Government contract or under a license conveying the rights to the Government; and

(ii) Does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the technical data or computer software will be delivered.

(k) *Applicability to subcontractors or suppliers.* (1) the Contractor shall assure that the rights afforded its subcontractors and suppliers under 10 U.S.C. 2320, 10 U.S.C. 2321, and the identification, assertion, and delivery processes required by paragraph (e) of this clause are recognized and protected.

(2) Whenever any noncommercial technical data or computer software is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in the subcontract or other contractual instrument, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. The Contractor shall use the Technical Data—Commercial Items clause of this contract to obtain technical data pertaining to commercial items, components, or processes. No other clause shall be used to enlarge or diminish the Government's, the Contractor's, or a higher tier subcontractor's or supplier's rights in a subcontractor's or supplier's technical data or computer software.

(3) Technical data required to be delivered by a subcontractor or supplier shall normally be delivered to the next higher tier contractor, subcontractor, or supplier. However, when there is a requirement in the prime contract for technical data which may be submitted with other than unlimited rights by a subcontractor or supplier, then said subcontractor or supplier may fulfill its requirement by submitting such technical data directly to the Government, rather than through a higher tier contractor, subcontractor, or supplier.

(4) The Contractor and higher tier subcontractors or suppliers shall not use their power to award contracts as economic leverage to obtain rights in technical data or computer software from their subcontractors or suppliers.

(5) In no event shall the Contractor use its obligation to recognize and protect subcontractor or supplier rights in technical data or computer software as an excuse for failing to satisfy its contractual obligation to the Government.

(End of clause)

ALTERNATE I (JUNE 1995)

As prescribed in 227.7104(d), add the following paragraph (l) to the basic clause:

(l) *Publication for sale.* (1) This paragraph applies only to technical data or computer software delivered to the Government with SBIR data rights.

(2) Upon expiration of the SBIR data rights period, the Government will not exercise its right to publish or authorize others to publish an item of technical data or computer software identified in this contract as being subject to paragraph (l) of this clause if the Contractor, prior to the expiration of the SBIR data rights period, or within two years following delivery of the data or software item, or within twenty-four months following the removal of any national security or export control restrictions, whichever is later, publishes such data or software item(s) and promptly notifies the Contracting Officer of such publication(s). Any such publication(s) shall include a notice identifying the number of this contract and the Government's rights in the published data.

(3) This limitation on the Government's right to publish for sale shall continue as long as the technical data or computer software are reasonably available to the public for purchase.

[60 FR 33499, June 28, 1995, as amended at 60 FR 61602, Nov. 30, 1995]

252.227–7019 Validation of asserted restrictions—Computer software.

As prescribed in 227.7104(e)(3) or 227.7203–6(c), use the following clause:

VALIDATION OF ASSERTED RESTRICTIONS—COMPUTER SOFTWARE (JUNE 1995)

(a) *Definitions.* (1) As used in this clause, unless otherwise specifically indicated, the term ''Contractor'' means the Contractor and its subcontractors or suppliers.

(2) Other terms used in this clause are defined in the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause of this contract.

(b) *Justification.* The Contractor shall maintain records sufficient to justify the validity of any markings that assert restrictions on the Government's rights to use, modify, reproduce, perform, display, release, or disclose computer software delivered or required to be delivered under this contract and shall be prepared to furnish to the Contracting Officer a written justification for such restrictive markings in response to a request for information under paragraph (d) or a challenge under paragraph (f) of this clause.

(c) *Direct contact with subcontractors or suppliers.* The Contractor agrees that the Contracting Officer may transact matters under this clause directly with subcontractors or suppliers at any tier who assert restrictions on the Government's right to use, modify, reproduce, release, perform, display, or disclose computer software. Neither this clause, nor any action taken by the Government under this clause, creates or implies privity of contract between the Government and the Contractor's subcontractors or suppliers.

(d) *Requests for information.* (1) The Contracting Officer may request the Contractor to provide sufficient information to enable the Contracting Officer to evaluate the Contractor's asserted restrictions. Such information shall be based upon the records required by this clause or other information reasonably available to the Contractor.

(2) Based upon the information provided, if the—

(i) Contractor agrees that an asserted restriction is not valid, the Contracting Officer may—

(A) Strike or correct the unjustified marking at the Contractor's expense; or

(B) Return the computer software to the Contractor for correction at the Contractor's expense. If the Contractor fails to correct or strike the unjustified restrictions and return the corrected software to the Contracting Officer within sixty (60) days following receipt of the software, the Contracting Officer may correct the strike the markings at the Contractor's expense.

(ii) Contracting Officer concludes that the asserted restriction is appropriate for this contract, the Contracting Officer shall so notify the Contractor in writing.

(3) The Contractor's failure to provide a timely response to a Contracting Officer's request for information or failure to provide sufficient information to enable the Contracting Officer to evaluate an asserted restriction shall constitute reasonable grounds for questioning the validity of an asserted restriction.

(e) *Government right to challenge and validate asserted restrictions.* (1) The Government, when there are reasonable grounds to do so, has the right to review and challenge the validity of any restrictions asserted by the Contractor on the Government's rights to use, modify, reproduce, release, perform, display, or disclose computer software delivered, to be delivered under this contract, or otherwise provided to the Government in the performance of this contract. Except for software that is publicly available, has been furnished to the Government without restrictions, or has been otherwise made available without restrictions, the Government may exercise this right only within three years after the date(s) the software is delivered or otherwise furnished to the Government, or three years following final payment under this contract, whichever is later.

(2) The absence of a challenge to an asserted restriction shall not constitute validation under this clause. Only a Contracting Officer's final decision or actions of an agency Board of Contract Appeals or a court of competent jurisdiction that sustain the validity of an asserted restriction constitute validation of the restriction.

(f) *Challenge procedures.* (1) A challenge must be in writing and shall—

(i) State the specific grounds for challenging the asserted restriction;

(ii) Require the Contractor to respond within sixty (60) days;

(iii) Require the Contractor to provide justification for the assertion based upon records kept in accordance with paragraph (b) of this clause and such other documentation that are reasonably available to the Contractor, in sufficient detail to enable the Contracting Officer to determine the validity of the asserted restrictions; and

(iv) State that a Contracting Officer's final decision, during the three-year period preceding this challenge, or action of a court of competent jurisdiction or Board of Contract Appeals that sustained the validity of an identical assertion made by the Contractor (or a licensee) shall serve as justification for the asserted restriction.

(2) The Contracting Officer shall extend the time for response if the Contractor submits a written request showing the need for additional time to prepare a response.

(3) The Contracting Officer may request additional supporting documentation if, in the Contracting Officer's opinion, the Contractor's explanation does not provide sufficient evidence to justify the validity of the asserted restrictions. The Contractor agrees

to promptly respond to the Contracting Officer's request for additional supporting documentation.

(4) Notwithstanding challenge by the Contracting Officer, the parties may agree on the disposition of an asserted restriction at any time prior to a Contracting Officer's final decision or, if the Contractor has appealed that decision, filed suit, or provided notice of an intent to file suit, at any time prior to a decision by a court of competent jurisdiction or Board of Contract Appeals.

(5) If the Contractor fails to respond to the Contracting Officer's request for information or additional information under paragraph (f)(1) of this clause, the Contracting Officer shall issue a final decision, in accordance with the Disputes clause of this contract, pertaining to the validity of the asserted restriction.

(6) If the Contracting Officer, after reviewing the written explanation furnished pursuant to paragraph (f)(1) of this clause, or any other available information pertaining to the validity of an asserted restriction, determines that the asserted restriction has—

(i) Not been justified, the Contracting Officer shall issue promptly a final decision, in accordance with the Disputes clause of this contract, denying the validity of the asserted restriction; or

(ii) Been justified, the Contracting Officer shall issue promptly a final decision, in accordance with the Disputes clause of this contract, validating the asserted restriction.

(7) A Contractor receiving challenges to the same asserted restriction(s) from more than one Contracting Officer shall notify each Contracting Officer of the other challenges. The notice shall also state which Contracting Officer initiated the first in time unanswered challenge. The Contracting Officer who initiated the first in time unanswered challenge, after consultation with the other Contracting Officers who have challenged the restrictions and the Contractor, shall formulate and distribute a schedule that provides the contractor a reasonable opportunity for responding to each challenge.

(g) *Contractor appeal—Government obligation.* (1) The Government agrees that, notwithstanding a Contracting Officer's final decision denying the validity of an asserted restriction and except as provided in paragraph (g)(3) of this clause, it will honor the asserted restriction—

(i) For a period of ninety (90) days from the date of the Contracting Officer's final decision to allow the Contractor to appeal to the appropriate Board of Contract Appeals or to file suit in an appropriate court;

(ii) For a period of one year from the date of the Contracting Officer's final decision if, within the first ninety (90) days following the Contracting Officer's final decision, the Contractor has provided notice of an intent to file suit in an appropriate court; or

(iii) Until final disposition by the appropriate Board of Contract Appeals or court of competent jurisdiction, if the Contractor has: (A) appealed to the Board of Contract Appeals or filed suit an appropriate court within ninety (90) days; or (B) submitted, within ninety (90) days, a notice of intent to file suit in an appropriate court and filed suit within one year.

(2) The Contractor agrees that the Government may strike, correct, or ignore the restrictive markings if the Contractor fails to—

(i) Appeal to a Board of Contract Appeals within ninety (90) days from the date of the Contracting Officer's final decision;

(ii) File suit in an appropriate court within ninety (90) days from such date; or

(iii) File suit within one year after the date of the Contracting Officer's final decision if the Contractor had provided notice of intent to file suit within ninety (90) days following the date of the Contracting Officer's final decision.

(3) The agency head, on a nondelegable basis, may determine that urgent or compelling circumstances do not permit awaiting the filing of suit in an appropriate court, or the rendering of a decision by a court of competent jurisdiction or Board of Contract Appeals. In that event, the agency head shall notify the Contractor of the urgent or compelling circumstances. Notwithstanding paragraph (g)(1) of this clause, the Contractor agrees that the agency may use, modify, reproduce, release, perform, display, or disclose computer software marked with (i) government purpose legends for any purpose, and authorize others to do so; or (ii) restricted or special license rights for government purposes only. The Government agrees not to release or disclose such software unless, prior to release or disclosure, the intended recipient is subject to the use and non-disclosure agreement at 227.7103–7 of the Defense Federal Acquisition Regulation Supplement (DFARS), or is a Government contractor receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. The agency head's determination may be made at any time after the date of the Contracting Officer's final decision and shall not affect the Contractor's right to damages against the United States, or other relief provided by law, if its asserted restrictions are ultimately upheld.

(h) *Final disposition of appeal or suit.* If the Contractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is:

(1) Sustained—

(i) Any restrictive marking on such computer software shall be struck or corrected at the contractor's expense or ignored; and

(ii) If the asserted restriction is found not to be substantially justified, the Contractor shall be liable to the Government for payment of the cost to the Government of reviewing the asserted restriction and the fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Government in challenging the restriction, unless special circumstances would make such payment unjust.

(2) Not sustained—

(i) The Government shall be bound by the asserted restriction; and

(ii) If the challenge by the Government is found not to have been made in good faith, the Government shall be liable to the Contractor for payment of fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Contractor in defending the restriction.

(i) *Flowdown.* The Contractor shall insert this clause in all contracts, purchase orders, and other similar instruments with its subcontractors or suppliers, at any tier, who will be furnishing computer software to the Government in the performance of this contract. The clause may not be altered other than to identify the appropriate parties.

(End of clause)

[60 FR 33503, June 28, 1995]

252.227–7020 Rights in special works.

As prescribed in 227.7105–3, 227.7106(a) or 227.7205(a), use the following clause:

RIGHTS IN SPECIAL WORKS (JUNE 1995)

(a) *Applicability.* This clause applies to works first created, generated, or produced and required to be delivered under this contract.

(b) *Definitions.* As used in this clause:

(1) ''Computer data base'' means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.

(2) ''Computer program'' means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

(3) ''Computer software'' means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer data bases or computer software documentation.

(4) ''Computer software documentation'' means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

(5) ''Unlimited rights'' means the rights to use, modify, reproduce, perform, display, release, or disclose a work in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

(6) The term ''works'' includes computer data bases, computer software, or computer software documentation; literary, musical, choreographic, or dramatic compositions; pantomimes; pictorial, graphic, or sculptural compositions; motion pictures and other audiovisual compositions; sound recordings in any medium; or, items of similar nature.

(c) *License rights.* (1) The Government shall have unlimited rights in works first produced, created, or generated and required to be delivered under this contract.

(2) When a work is first produced, created, or generated under this contract, and such work is required to be delivered under this contract, the Contractor shall assign copyright in those works to the Government. The Contractor, unless directed to the contrary by the Contracting Officer, shall place the following notice on such works: ''© (*Year date of delivery*) United States Government, as represented by the Secretary of (*department*). All rights reserved.''

For phonorecords, the ''©'' markings shall be replaced by a ''P''.

(3) The Contractor grants to the Government a royalty-free, world-wide, nonexclusive, irrevocable license to reproduce, prepare derivative works from, distribute, perform, or display, and to have or authorize others to do so, the Contractor's copyrighted works not first produced, created, or generated under this contract that have been incorporated into the works deliverable under this contract.

(d) *Third party copyrighted data.* The Contractor shall not incorporate, without the written approval of the Contracting Officer, any copyrighted works in the works to be delivered under this contract unless the Contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license of the scope identified in paragraph (c)(3) of this clause and, prior to delivery of such works—

(1) Has affixed to the transmittal document a statement of the license rights obtained; or

(2) For computer software, has provided a statement of the license rights obtained in a form acceptable to the Contracting Officer.

(e) *Indemnification.* The Contractor shall indemnify and save and hold harmless the Government, and its officers, agents and employees acting for the Government, against any liability, including costs and expenses,

(1) for violation of proprietary rights, copyrights, or rights of privacy or publicity, arising out of the creation, delivery, use, modification, reproduction, release, performance, display, or disclosure of any works furnished under this contract, or (2) based upon any libelous or other unlawful matter contained in such works.

(f) *Government-furnished information.* Paragraphs (d) and (e) of this clause are not applicable to information furnished to the Contractor by the Government and incorporated in the works delivered under this contract.

(End of clause)

[60 FR 33504, June 28, 1995]

252.227–7021 Rights in data—existing works.

As prescribed at 227.7105–2(a), use the following clause:

RIGHTS IN DATA—EXISTING WORKS (MAR. 1979)

(a) The term *works* as used herein includes literary, musical, and dramatic works; pantomimes and choreographic works; pictorial, graphic and sculptural works; motion pictures and other audiovisual works; sound recordings; and works of a similar nature. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) Except as otherwise provided in this contract, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world (1) to distribute, perform publicly, and display publicly the works called for under this contract and (2) to authorize others to do so for Government purposes.

(c) The Contractor shall indemnify and save and hold harmless the Government, and its officers, agents, and employees acting for the Government, against any liability, including costs and expenses, (1) for violation of proprietary rights, copyrights, or rights of privacy or publicity arising out of the creation, delivery, or use, of any works furnished under this contract, or (2) based upon any libelous or other unlawful matter contained in same works.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 60 FR 33504, June 28, 1994]

252.227–7022 Government rights (unlimited).

As prescribed at 227.7107–1(a), use the following clause:

GOVERNMENT RIGHTS (UNLIMITED) (MAR. 1979)

The Government shall have unlimited rights, in all drawings, designs, specifications, notes and other works developed in the performance of this contract, including the right to use same on any other Government design or construction without additional compensation to the Contractor. The Contractor hereby grants to the Government a paid-up license throughout the world to all such works to which he may assert or establish any claim under design patent or copyright laws. The Contractor for a period of three (3) years after completion of the project agrees to furnish the original or copies of all such works on the request of the Contracting Officer.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 60 FR 33504, June 28, 1994]

252.227–7023 Drawings and other data to become property of government.

As prescribed at 227.7107–1(b), use the following clause:

DRAWINGS AND OTHER DATA TO BECOME PROPERTY OF GOVERNMENT (MAR. 1979)

All designs, drawings, specifications, notes and other works developed in the performance of this contract shall become the sole property of the Government and may be used on any other design or construction without additional compensation to the Contractor. The Government shall be considered the ''person for whom the work was prepared'' for the purpose of authorship in any copyrightable work under 17 U.S.C. 201(b). With respect thereto, the Contractor agrees not to assert or authorize others to assert any rights nor establish any claim under the design patent or copyright laws. The Contractor for a period of three (3) years after completion of the project agrees to furnish all retained works on the request of the Contracting Officer. Unless otherwise provided in this contract, the Contractor shall have the right to retain copies of all works beyond such period.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 60 FR 33505, June 28, 1995]

252.227–7024 Notice and approval of restricted designs.

As prescribed at 227.7107–3, use the following clause:

NOTICE AND APPROVAL OF RESTRICTED DESIGNS (APR. 1984)

In the performance of this contract, the Contractor shall, to the extent practicable, make maximum use of structures, machines, products, materials, construction methods, and equipment that are readily available through Government or competitive commercial channels, or through standard or proven production techniques, methods, and processes. Unless approved by the Contracting Officer, the Contractor shall not produce a design or specification that requires in this construction work the use of structures, products, materials, construction equipment, or processes that are known by the Contractor to be available only from a sole source. The Contractor shall promptly report any such design or specification to the Contracting Officer and give the reason why it is considered necessary to so restrict the design or specification.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 60 FR 33505, June 28, 1995]

252.227–7025 Limitations on the use or disclosure of government-furnished information marked with restrictive legends.

As prescribed in 227.7103–6(c), 227.7104(f)(1), or 227.7203–6(d), use the following clause:

LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT-FURNISHED INFORMATION MARKED WITH RESTRICTIVE LEGENDS (JUNE 1995)

(a)(1) For contracts requiring the delivery of technical data, the terms ''limited rights'' and ''Government purpose rights'' are defined in the Rights in Technical Data—Noncommercial Items clause of this contract.

(2) For contracts that do not require the delivery of technical data, the terms ''government purpose rights'' and ''restricted rights'' are defined in the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause of this contract.

(3) For Small Business Innovative Research program contracts, the terms ''limited rights'' and ''restricted rights'' are defined in the Rights in Noncommercial Technical Data and Computer Software—Small Business Innovative Research (SBIR) Program clause of this contract.

(b) Technical data or computer software provided to the Contractor as Government furnished information (GFI) under this contract may be subject to restrictions on use, modification, reproduction, release, performance, display, or further disclosure.

(1) *GFI marked with limited or restricted rights legends.* The Contractor shall use, modify, reproduce, perform, or display technical data received from the Government with limited rights legends or computer software received with restricted rights legends only in the performance of this contract. The Contractor shall not, without the express written permission of the party whose name appears in the legend, release or disclose such data or software to any person.

(2) *GFI marked with government purpose rights legends.* The Contractor shall use technical data or computer software received from the Government with government purpose rights legends for government purposes only. The Contractor shall not, without the express written permission of the party whose name appears in the restrictive legend, use, modify, reproduce, release, perform, or display such data or software for any commercial purpose or disclose such data or software to a person other than its subcontractors, suppliers, or prospective subcontractors or suppliers, who require the data or software to submit offers for, or perform, contracts under this contract. Prior to disclosing the data or software, the Contractor shall require the persons to whom disclosure will be made to complete and sign the non-disclosure agreement at 227.7103–7 of the Defense Federal Acquisition Regulation Supplement (DFARS).

(3) *GFI marked with specially negotiated license rights legends.* The Contractor shall use, modify, reproduce, release, perform, or display technical data or computer software received from the Government with specially negotiated license legends only as permitted in the license. Such data or software may not be released or disclosed to other persons unless permitted by the license and, prior to release or disclosure, the intended recipient has completed the non-disclosure agreement at DFARS 227.7103–7. The Contractor shall modify paragraph (1)(c) of the non-disclosure agreement to reflect the recipient's obligations regarding use, modification, reproduction, release, performance, display, and disclosure of the data or software.

(c) *Indemnification and creation of third party beneficiary rights.* The Contractor agrees—

(1) To indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorneys fees, court costs, and expenses, arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of technical data or computer software received from the Government with restrictive legends by the Contractor or any person to whom the Contractor has released or disclosed such data or software; and

(2) That the party whose name appears on the restrictive legend, in addition to any

other rights it may have, is a third party beneficiary who has the right of direct action against the Contractor, or any person to whom the Contractor has released or disclosed such data or software, for the unauthorized duplication, release, or disclosure of technical data or computer software subject to restrictive legends.

(End of clause)

[60 FR 33505, June 28, 1995]

252.227–7026 Deferred delivery of technical data or computer software.

As prescribed at 227.7103–8(a), use the following clause:

DEFERRED DELIVERY OF TECHNICAL DATA OR COMPUTER SOFTWARE (APR. 1988)

The Government shall have the right to require, at any time during the performance of this contract, within two (2) years after either acceptance of all items (other than data or computer software) to be delivered under this contract or termination of this contract, whichever is later, delivery of any technical data or computer software item identified in this contract as ''deferred delivery'' data or computer software. The obligation to furnish such technical data required to be prepared by a subcontractor and pertaining to an item obtained from him shall expire two (2) years after the date Contractor accepts the last delivery of that item from that subcontractor for use in performing this contract.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 60 FR 33505, June 28, 1995]

252.227–7027 Deferred ordering of technical data or computer software.

As prescribed at 227.7103–8(b), use the following clause:

DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE (APR. 1988)

In addition to technical data or computer software specified elsewhere in this contract to be delivered hereunder, the Government may, at any time during the performance of this contract or within a period of three (3) years after acceptance of all items (other than technical data or computer software) to be delivered under this contract or the termination of this contract, order any technical data or computer software generated in the performance of this contract or any subcontract hereunder. When the technical data or computer software is ordered, the Contractor shall be compensated for converting the data or computer software into the prescribed form, for reproduction and delivery. The obligation to deliver the technical data of a subcontractor and pertaining to an item obtained from him shall expire three (3) years after the date the Contractor accepts the last delivery of that item from that subcontractor under this contract. The Government's rights to use said data or computer software shall be pursuant to the ''Rights in Technical Data and Computer Software'' clause of this contract.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 60 FR 33505, June 28, 1995]

252.227–7028 Technical data or computer software previously delivered to the government.

As prescribed in 227.7103–6(d), 227.7104(f)(2), or 227.7203–6(e), use the following provision:

TECHNICAL DATA OR COMPUTER SOFTWARE PREVIOUSLY DELIVERED TO THE GOVERNMENT (JUNE 1995)

The Offeror shall attach to its offer an identification of all documents or other media incorporating technical data or computer software it intends to deliver under this contract with other than unlimited rights that are identical or substantially similar to documents or other media that the Offeror has produced for, delivered to, or is obligated to deliver to the Government under any contract or subcontract. The attachment shall identify—

(a) The contract number under which the data or software were produced;

(b) The contract number under which, and the name and address of the organization to whom, the data or software were most recently delivered or will be delivered; and

(c) Any limitations on the Government's rights to use or disclose the data or software, including, when applicable, identification of the earliest date the limitations expire.

(End of provision)

[60 FR 33505, June 28, 1995]

252.227–7029 [Reserved]

252.227–7030 Technical data—withholding of payment.

As prescribed at 227.7103–6(e)(2) or 227.7104(e)(4), use the following clause:

TECHNICAL DATA—WITHHOLDING OF PAYMENT (OCT. 1988)

(a) If technical data specified to be delivered under this contract, is not delivered within the time specified by this contract or is deficient upon delivery (including having restrictive markings not identified in the list described in the clause at 252.227–7013(k) of this contract), the Contracting Officer may until such data is accepted by the Government, withhold payment to the Contractor of ten percent (10%) of the total contract price or amount unless a lesser withholding is specified in the contract. Payments shall not be withheld nor any other action taken pursuant to this paragraph when the Contractor's failure to make timely delivery or to deliver such data without deficiencies arises out of causes beyond the control and without the fault or negligence of the Contractor.

(b) The withholding of any amount or subsequent payment to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 60 FR 33505, June 28, 1995; 62 FR 34132, June 24, 1997]

252.227–7031 [Reserved]

252.227–7032 Rights in technical data and computer software (foreign).

As prescribed in 227.7103–17, use the following clause:

RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE (FOREIGN) (JUNE 1975)

The United States Government may duplicate, use, and disclose in any manner for any purposes whatsoever, including delivery to other governments for the furtherance of mutual defense of the United States Government and other governments, all technical data including reports, drawings and blueprints, and all computer software, specified to be delivered by the Contractor to the United States Government under this contract.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 60 FR 33505, June 28, 1995]

252.227–7033 Rights in shop drawings.

As prescribed in 227.7107–(1)(c), use the following clause:

RIGHTS IN SHOP DRAWINGS (APR. 1966)

(a) Shop drawings for construction means drawings, submitted to the Government by the Construction Contractor, subcontractor or any lower-tier subcontractor pursuant to a construction contract, showing in detail (i) the proposed fabrication and assembly of structural elements and (ii) the installation (i.e., form, fit, and attachment details) of materials or equipment. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(b) This clause, including this paragraph (b), shall be included in all subcontracts hereunder at any tier.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 60 FR 33505, June 28, 1995]

252.227–7034 Patents—subcontracts.

As prescribed at 227.304–4, insert the following clause:

PATENTS—SUBCONTRACTS (APR. 1984)

The Contractor will include the clause at FAR 52.227–12, Patent Rights—Retention by the Contractor (Long Form), suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by other than a small business firm or nonprofit organization.

(End of clause)

252.227–7035 [Reserved]

252.227–7036 Declaration of Technical Data Conformity.

As prescribed at 227.7103–6(e)(3) or 227.7104(e)(5), use the following clause:

DECLARATION OF TECHNICAL DATA CONFORMITY (JAN 1997)

All technical data delivered under this contract shall be accompanied by the following written declaration: The Contractor, _____, hereby declares that, to the best of its knowledge and belief, the technical data delivered herewith under Contract No. _____ is complete, accurate, and complies with all requirements of the contract.

Date _____

Name and Title of Authorized Official _____

(End of clause)

[62 FR 2614, Jan. 17, 1997]

252.227–7037 Validation of restrictive markings on technical data.

As prescribed in 227.7102–3(c), 227.7103(e)(4), 227.7104(e)(6), or 227.7203–6(f), use the following clause:

VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA (NOV 1995)

(a) *Definitions.* The terms used in this clause are defined in the Rights in Technical Data—Noncommercial Items clause of this contract.

(b) *Contracts for commercial items—presumption of development at private expense.* Under a contract for a commercial item, component, or process, the Department of Defense shall presume that a Contractor's asserted use or release restrictions are justified on the basis that the item, component, or process was developed exclusively at private expense. The Department shall not challenge such assertions unless information the Department demonstrates that the item, component, or process was not developed exclusively at private expense.

(c) *Justification.* The Contractor or subcontractor at any tier is responsible for maintaining records sufficient to justify the validity of its markings that impose restrictions on the Government and others to use, duplicate, or disclose technical data delivered or required to be delivered under the contract or subcontract. Except under contracts for commercial items, the Contractor or subcontractor shall be prepared to furnish to the Contracting Officer a written justification for such restrictive markings in response to a challenge under paragraph (e) of this clause.

(d) *Prechallenge request for information.* (1) The Contracting Officer may request the Contractor or subcontractor to furnish a written explanation for any restriction asserted by the Contractor or subcontractor on the right of the United States or others to use technical data. If, upon review of the explanation submitted, the Contracting Officer remains unable to ascertain the basis of the restrictive marking, the Contracting Officer may further request the Contractor or subcontractor to furnish additional information in the records of, or otherwise in the possession of or reasonably available to, the Contractor or subcontractor to justify the validity of any restrictive marking on technical data delivered or to be delivered under the contract or subcontract (e.g., a statement of facts accompanied with supporting documentation). The Contractor or subcontractor shall submit such written data as requested by the Contracting Officer within the time required or such longer period as may be mutually agreed.

(2) If the Contracting Officer, after reviewing the written data furnished pursuant to paragraph (d)(1) of this clause, or any other available information pertaining to the validity of a restrictive marking, determines that reasonable grounds exist to question the current validity of the marking and that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data relates, the Contracting Officer shall follow the procedures in paragraph (e) of this clause.

(3) If the Contractor or subcontractor fails to respond to the Contracting Officer's request for information under paragraph (d)(1) of this clause, and the Contracting Officer determines that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data relates, the Contracting Officer may challenge the validity of the marking as described in paragraph (e) of this clause.

(e) *Challenge.* (1) Notwithstanding any provision of this contract concerning inspection and acceptance, if the Contracting Officer determines that a challenge to the restrictive marking is warranted, the Contracting Officer shall send a written challenge notice to the Contractor or subcontractor asserting the restrictive markings. Such challenge shall—

(i) State the specific grounds for challenging the asserted restriction;

(ii) Require a response within sixty (60) days justifying and providing sufficient evidence as to the current validity of the asserted restriction;

(iii) State that a DoD Contracting Officer's final decision, issued pursuant to paragraph (g) of this clause, sustaining the validity of a restrictive marking identical to the asserted restriction, within the three-year period preceding the challenge, shall serve as justification for the asserted restriction if the validated restriction was asserted by the same Contractor or subcontractor (or any licensee of such Contractor or subcontractor) to which such notice is being provided; and

(iv) State that failure to respond to the challenge notice may result in issuance of a final decision pursuant to paragraph (f) of this clause.

(2) The Contracting Officer shall extend the time for response as appropriate if the Contractor or subcontractor submits a written request showing the need for additional time to prepare a response.

(3) The Contractor's or subcontractor's written response shall be considered a claim within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601, et seq.), and shall be certified in the form prescribed at 33.207 of the Federal Acquisition Regulation, regardless of dollar amount.

(4) A Contractor or subcontractor receiving challenges to the same restrictive markings from more than one Contracting Officer shall

notify each Contracting Officer of the existence of more than one challenge. The notice shall also state which Contracting Officer initiated the first in time unanswered challenge. The Contracting Officer initiating the first in time unanswered challenge after consultation with the Contractor or subcontractor and the other Contracting Officers, shall formulate and distribute a schedule for responding to each of the challenge notices to all interested parties. The schedule shall afford the Contractor or subcontractor an opportunity to respond to each challenge notice. All parties will be bound by this schedule.

(f) *Final decision when Contractor or subcontractor fails to respond.* Upon a failure of a Contractor or subcontractor to submit any response to the challenge notice, other than a failure to respond under a contract for commercial items, the Contracting Officer will issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause of this contract pertaining to the validity of the asserted restriction. This final decision shall be issued as soon as possible after the expiration of the time period of paragraph (e)(1)(ii) or (e)(2) of this clause. Following issuance of the final decision, the Contracting Officer will comply with the procedures in paragraphs (g)(2) (ii) through (iv) of this clause.

(g) *Final decision when Contractor or subcontractor responds.* (1) if the Contracting Officer determines that the Contractor or subcontractor has justified the validity of the restrictive marking, the Contracting Officer shall issue a final decision to the Contractor or subcontractor sustaining the validity of the restrictive marking, and stating that the Government will continue to be bound by the restrictive marking. This final decision shall be issued within sixty (60) days after receipt of the Contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor that the Government will require. The notification of a longer period for issuance of a final decision will be made within sixty (60) days after receipt of the response to the challenge notice.

(2)(i) If the Contracting Officer determines that the validity of the restrictive marking is not justified, the Contracting Officer shall issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause of this contract. Notwithstanding paragraph (e) of the Disputes clause, the final decision shall be issued within sixty (60) days after receipt of the Contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor of the longer period that the Government will require. The notification of a longer period for issuance of a final decision will be made within sixty (60) days after receipt of the response to the challenge notice.

(ii) The Government agrees that it will continue to be bound by the restrictive marking of a period of ninety (90) days from the issuance of the Contracting Officer's final decision under paragraph (g)(2)(i) of this clause. The Contractor or subcontractor agrees that, if it intends to file suit in the United States Claims Court it will provide a notice of intent to file suit to the Contracting Officer within ninety (90) days from the issuance of the Contracting Officer's final decision under paragraph (g)(2)(i) of this clause. If the Contractor or subcontractor fails to appeal, file suit, or provide a notice of intent to file suit to the Contracting Officer within the ninety (90)-day period, the Government may cancel or ignore the restrictive markings, and the failure of the Contractor or subcontractor to take the required action constitutes agreement with such Government action.

(iii) The Government agrees that it will continue to be bound by the restrictive marking where a notice of intent to file suit in the United States Claims Court is provided to the Contracting Officer within ninety (90) days from the issuance of the final decision under paragraph (g)(2)(i) of this clause. The Government will no longer be bound, and the Contractor or subcontractor agrees that the Government may strike or ignore the restrictive markings, if the Contractor or subcontractor fails to file its suit within one (1) year after issuance of the final decision. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, that urgent or compelling circumstances will not permit waiting for the filing of a suit in the United States Claims Court, the Contractor or subcontractor agrees that the agency may, following notice to the Contractor or subcontractor, authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the Contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(iv) The Government agrees that it will be bound by the restrictive marking where an appeal or suit is filed pursuant to the Contract Disputes Act until final disposition by an agency Board of Contract Appeals or the United States Claims Court. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, following notice to the Contractor that urgent or compelling circumstances will not permit awaiting the decision by such Board of Contract Appeals or the United States Claims Court, the Contractor or subcontractor

agrees that the agency may authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the Contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(h) *Final disposition of appeal or suit.* (1) If the Contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is sustained—

(i) The restrictive marking on the technical data shall be cancelled, corrected or ignored; and

(ii) If the restrictive marking is found not to be substantially justified, the Contractor or subcontractor, as appropriate, shall be liable to the Government for payment of the cost to the Government of reviewing the restrictive marking and the fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Government in challenging the marking, unless special circumstances would make such payment unjust.

(2) If the Contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is not sustained—

(i) The Government shall continue to be bound by the restrictive marking; and

(ii) The Government shall be liable to the Contractor or subcontractor for payment of fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Contractor or subcontractor in defending the marking, if the challenge by the Government is found not to have been made in good faith.

(i) *Duration of right to challenge.* The Government may review the validity of any restriction on technical data, delivered or to be delivered under a contract, asserted by the Contractor or subcontractor. During the period within three (3) years of final payment on a contract or within three (3) years of delivery of the technical data to the Government, whichever is later, the Contracting Officer may review and make a written determination to challenge the restriction. The Government may, however, challenge a restriction on the release, disclosure or use of technical data at any time if such technical data—

(1) Is publicly available;

(2) Has been furnished to the United States without restriction; or

(3) Has been otherwise made available without restriction. Only the Contracting Officer's final decision resolving a formal challenge by sustaining the validity of a restrictive marking constitutes ''validation'' as addressed in 10 U.S.C. 2321.

(j) *Decision not to challenge.* A decision by the Government, or a determination by the Contracting Officer, to not challenge the restrictive marking or asserted restriction shall not constitute ''validation.''

(k) *Privity of contract.* The Contractor or subcontractor agrees that the Contracting Officer may transact matters under this clause directly with subcontractors at any tier that assert restrictive markings. However, this clause neither creates nor implies privity of contract between the Government and subcontractors.

(l) *Flowdown. The Contractor or subcontractor agrees to insert this clause in contractual instruments with its subcontractors or suppliers at any tier requiring the delivery of technical data, except contractual instruments for commercial items or commercial components.*

(End of clause)

[60 FR 33505, June 28, 1995, as amended at 60 FR 61602, Nov. 30, 1995]

252.227–7038 [Reserved]

252.227–7039 Patents—reporting of subject inventions.

As prescribed at 227.303(a), insert the following clause:

PATENTS—REPORTING OF SUBJECT INVENTIONS (APR. 1990)

The Contractor shall furnish the Contracting Officer the following:

(a) Interim reports every twelve (12) months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period and stating that all subject inventions have been disclosed or that there are no such inventions.

(b) A final report, within three (3) months after completion of the contracted work, listing all subject inventions or stating that there were no such inventions.

(c) Upon request, the filing date, serial number and title, a copy of the patent application and patent number, and issue data for any subject invention for which the Contractor has retained title.

(d) Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(End of clause)

252.228–7000 Reimbursement for war-hazard losses.

As prescribed in 228.370(a), use the following clause:

REIMBURSEMENT FOR WAR-HAZARD LOSSES (DEC. 1991)

(a) Costs for providing employee war-hazard benefits in accordance with paragraph (b)

of the Workers' Compensation and War-Hazard Insurance clause of this contract are allowable if the Contractor—

(1) Submits proof of loss files to support payment or denial of each claim;

(2) Subject to Contracting Officer approval, makes lump sum final settlement of any open claims and obtains necessary release documents within one year of the expiration or termination of this contract, unless otherwise extended by the Contracting Officer; and

(3) Provides the Contracting Officer at the time of final settlement of this contract—

(i) An investigation report and evaluation of any potential claim; and

(ii) An estimate of the dollar amount involved should the potential claim mature.

(b) The cost of insurance for liabilities reimbursable under this clause is not allowable.

(c) The Contracting Officer may require the Contractor to assign to the Government all right, title, and interest to any refund, rebate, or recapture arising out of any claim settlements.

(d) The Contractor agrees to—

(1) Investigate and promptly notify the Contracting Officer in writing of any occurrence which may give rise to a claim or potential claim, including the estimated amount of the claim;

(2) Give the Contracting Officer immediate written notice of any suit or action filed which may result in a payment under this clause; and

(3) Provide assistance to the Government in connection with any third party suit or claim relating to this clause which the Government elects to prosecute or defend in its own behalf.

(End of clause)

252.228–7001 Ground and flight risk.

As prescribed in 228.370(b), use the following clause:

GROUND AND FLIGHT RISK (SEP 1996)

(a) Definitions. As used in this clause—

(1) *Aircraft,* unless otherwise provided in the Schedule, means—

(i) Aircraft to be delivered to the Government under this contract (either before or after Government acceptance), including complete aircraft and aircraft in the process of being manufactured, disassembled, or reassembled; provided that an engine, portion of a wing or a wing is attached to a fuselage of the aircraft; and

(ii) Aircraft, whether in a state of disassembly or reassembly, furnished by the Government to the Contractor under this contract, including all property installed, in the process of installation, or temporarily removed; provided that the aircraft and property are not covered by a separate bailment agreement.

(2) *Contractor's premises* means those premises designated in the Schedule or in writing by the Contracting Officer, and any other place the aircraft is moved for safeguarding.

(3) *Flight* means any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer.

(i) For land based aircraft, *flight* begins with the taxi roll from a flight line on the Contractor's premises and continues until the aircraft has completed the taxi roll in returning to a flight line on the Contractor's premises;

(ii) For seaplanes, *flight* begins with the launching from a ramp on the Contractor's premises and continues until the aircraft has completed its landing run and is beached at a ramp on the Contractor's premises;

(iii) For helicopters, *flight* begins upon engagement of the rotors for the purpose of take-off from the Contractor's premises and continues until the aircraft has returned to the ground on the Contractor's premises and the rotors are disengaged; and

(iv) For vertical take-off aircraft, *flight* begins upon disengagement from any launching platform or device on the Contractor's premises and continues until the aircraft has been engaged to any launching platform or device on the Contractor's premises;

(v) All aircraft off the Contractor's premises shall be considered to be in flight when on the ground or water for reasonable periods of time following emergency landings, landings made in performance of this contract, or landings approved in writing by the Contracting Officer.

(4) *Flight crew member* means the pilot, the co-pilot, and, unless otherwise provided in the Schedule, the flight engineer, navigator, and bombardier-navigator when assigned to their respective crew positions for the purpose of conducting any flight on behalf of the Contractor. If required, a defense systems operator may also be assigned as a flight crew member.

(5) *In the open* means located wholly outside of buildings on the Contractor's premises or other places described in the Schedule as being *in the open.* Government furnished aircraft shall be considered to be located *in the open* at all times while in the Contractor's possession, care, custody, or control.

(6) *Operation* means operations and tests of the aircraft and its installed equipment, accessories, and power plants, while the aircraft is in the open or in motion. The term does not apply to aircraft on any production line or in flight.

(b) Except as may be specifically provided in the Schedule as an exception to this clause, the Government assumes the risk of

damage to, or loss or destruction of aircraft *in the open,* during *operation,* and in *flight.* The Contractor shall not be liable to the Government for such damage, loss, or destruction.

(c) The Government's assumption of risk for aircraft in the open shall continue unless the Contracting Officer finds that the aircraft is in the open under unreasonable conditions, and the Contractor fails to take prompt corrective action.

(1) The Contracting Officer, when finding aircraft in the open under unreasonable conditions, shall notify the Contractor in writing of the unreasonable conditions and require the Contractor to make corrections within a reasonable time.

(2) Upon receipt of the notice, the Contractor shall promptly correct the cited conditions, regardless of whether there is agreement that the conditions are unreasonable. If the Contracting Officer later determines that the cited conditions were not unreasonable, an equitable adjustment shall be made in the contract price for any additional costs incurred in correcting the conditions. Any dispute as to the unreasonableness of the conditions or the equitable adjustment shall be considered a dispute under the Disputes clause of this contract.

(3) If the Contracting Officer finds that the Contractor failed to act promptly to correct the cited conditions or failed to correct the conditions within a reasonable time, the Contracting Officer may terminate the Government's assumption of risk for any aircraft in the open under the cited conditions. The termination will be effective at 12:01 am on the fifteenth day following the day the written notice is received by the Contractor. If the Contracting Officer later determines that the Contractor acted promptly to correct the cited conditions or that the time taken by the Contractor was not unreasonable, an equitable adjustment shall be made in the contract price for any additional costs incurred as a result of termination of the Government's assumption of risk. Any dispute as to the timeliness of the Contractor's action or the equitable adjustment shall be considered a dispute under the Disputes clause of this contract.

(4) If the Government terminates its assumption of risk, the risk of loss for Government-furnished property shall be determined in accordance with the Government Property clause of this contract.

(5) The Contractor shall promptly notify the Contracting Officer when unreasonable conditions have been corrected. If the Government elects to again assume the risk of loss and relieve the Contractor of liabilities, the Contracting Officer will notify the Contractor. The Contractor shall be entitled to an equitable adjustment in the contract price for any insurance costs extending from the end of the third working day after the Contractor notice of correction until the Contractor is notified that the Government will assume the risk of loss. If the Government does not again assume the risk of loss and conditions have been corrected, the Contractor shall be entitled to an equitable adjustment for insurance costs, if any, extending after the third working day.

(d) The Government's assumption of risk shall not extend to damage, loss, or destruction of aircraft which—

(1) Results from failure of the Contractor, due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel, to maintain and administer a program for the protection and preservation of aircraft in the open and during operation in accordance with sound industrial practice. The term *Contractor's managerial personnel* means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or other equivalent representatives who supervise or direct all or substantially all of the Contractor's business; or all or substantially all of the Contractor's operations at any one plant or separate location at which this contract is performed; or a separate and complete major industrial operation in connection with the performance of this contract;

(2) Is sustained during flight if the flight crew members have not been approved in writing by the Government Flight Representative, who has been authorized in accordance with the combined regulation entitled ''Contractor's Flight and Ground Operations'' (Air Force Regulation 55–22, Army Regulation 95–20, NAVAIR Instruction 3710.1C, and Defense Logistics Agency Manual 8210.1);

(3) Occurs in the course of transportation by rail, or by conveyance on public streets, highways, or waterways, except for Government-furnished property;

(4) Is covered by insurance;

(5) Consists of wear and tear; deterioration (including rust and corrosion); freezing; or mechanical, structural, or electrical breakdown or failure, unless these are the result of other loss, damage or destruction covered by this clause. (This exclusion does not apply to Government-furnished property if damage consists of reasonable wear and tear or deterioration, or results from inherent vice in the property.); or

(6) Is sustained while the aircraft is being worked on and is a direct result of the work unless such damage, loss, or destruction would be covered by insurance which would have been maintained by the Contractor, but for the Government's assumption of risk.

(e) With the exception of damage, loss, or destruction in flight, the Contractor assumes the risk and shall be responsible for the first $25,000 of loss or damage to aircraft in the open or during operation resulting from each separate event, except for reasonable wear

and tear and to the extent the loss or damage is caused by negligence of Government personnel. If the Government elects to require that the aircraft be replaced or restored by the Contractor to its condition immediately prior to the damage, the equitable adjustment in the price authorized by paragraph (i) of this clause shall not include the dollar amount of the risk assumed by the Contractor. In the event the Government does not elect repair or replacement, the Contractor agrees to credit the contract price or pay the Government $25,000 (or the amount of the loss, if less) as directed by the Contracting Officer.

(f) A subcontractor shall not be relieved from liability for damage, loss, or destruction of aircraft while in its possession or control, except to the extent that the subcontract, with the written approval of the Contracting Officer, provides for relief from each liability. In the absence of approval, the subcontract shall contain provisions requiring the return of aircraft in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract. Where a subcontractor has not been relieved from liability, and damage, loss, or destruction occurs, the Contractor shall enforce liability against the subcontractor for the benefit of the Government.

(g) The Contractor warrants that the contract price does not and will not include, except as may be authorized in this clause, any charge or contingency reserve for insurance covering damage, loss, or destruction of aircraft while in the open, during operation, or in flight when the risk has been assumed by the Government, even if the assumption may be terminated for aircraft in the open.

(h) In the event of damage, loss, or destruction of aircraft in the open, during operation, or in flight, the Contractor shall take all reasonable steps to protect the aircraft from further damage, to separate damaged and undamaged aircraft, to put all aircraft in the best possible order and further, except in cases covered by paragraph (e) of this clause, the Contractor shall furnish to the Contracting Officer a statement of—

(1) The damaged, lost, or destroyed aircraft;

(2) The time and origin of the damage, loss, or destruction;

(3) All known interests in commingled property of which aircraft are a part; and

(4) The insurance, if any, covering the interest in commingled property.

Except in cases covered by paragraph (e) of this clause, the Contracting Officer will make an equitable adjustment in the contract price for expenditures made by the Contractor in performing the obligations under this paragraph.

(i) If prior to delivery and acceptance by the Government, aircraft is damaged, lost, or destroyed and the Government assumed the risk, the Government shall either—

(1) Require that the aircraft be replaced or restored by the Contractor to the condition immediately prior to the damage, in which event the Contracting Officer will make an equitable adjustment in the contract price and the time for contract performance; or

(2) Terminate this contract with respect to the aircraft, in which event the Contractor shall be paid the contract price for the aircraft (or, if applicable, any work to be performed on the aircraft) less any amount the Contracting Officer determines—

(i) It would have cost the Contractor to complete the aircraft (or any work to be performed on the aircraft) together with anticipated profit on uncompleted work; and

(ii) Would be the value of the damaged aircraft or any salvage retained by the Contractor.

The Contracting Officer shall prescribe the manner of disposition of the damaged, lost, or destroyed aircraft, or any parts of the aircraft. If any additional costs of such disposition are incurred by the Contractor, a further equitable adjustment will be made in the amount due the Contractor. Failure of the parties to agree upon termination costs or an equitable adjustment with respect to any aircraft shall be considered a dispute under the Disputes clause.

(j) In the event the Contractor is reimbursed or compensated by a third person for damage, loss, or destruction of aircraft and has also been compensated by the Government, the Contractor shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's right to recover against third parties for damage, loss, or destruction. Upon the request of the Contracting Officer or authorized representative, the Contractor shall at Government expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment of subrogation) in obtaining recovery.

(k) The Contractor agrees to be bound by the operating procedures contained in the combined regulation entitled ''Contractor's Flight and Ground Operations'' in effect on the date of contract award.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 56 FR 67221, Dec. 30, 1991; 61 FR 50456, Sept. 26, 1996]

252.228–7002 Aircraft flight risk.

As prescribed in 228.370(c), use the following clause:

AIRCRAFT FLIGHT RISK (SEP 1996)

(a) Definitions. As used in this clause—

(1) *Aircraft,* unless otherwise provided in the Schedule, means—

(i) Aircraft furnished by the Contractor under this contract (either before or after Government acceptance); or

(ii) Aircraft furnished by the Government to the Contractor, including all Government property placed on, installed or attached to the aircraft; provided that the aircraft and property are not covered by a separate bailment agreement.

(2) *Flight* means any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer.

(i) For land-based aircraft, *flight* begins with the taxi roll from a flight line and continues until the aircraft has completed the taxi roll to a flight line.

(ii) For seaplanes, *flight* begins with the launching from a ramp and continues until the aircraft has completed its landing run and is beached at a ramp.

(iii) For helicopters, *flight* begins upon engagement of the rotors for the purpose of take-off and continues until the aircraft has returned to the ground and rotors are disengaged.

(iv) For vertical take-off aircraft, *flight* begins upon disengagement from any launching platform or device and continues until the aircraft has been reengaged to any launching platform or device.

(3) *Flight crew members* means the pilot, copilot, and unless otherwise provided in the Schedule, the flight engineer, navigator, bombardier-navigator, and defense systems operator as required, when assigned to their respective crew positions to conduct any flight on behalf of the Contractor.

(b) This clause takes precedence over any other provision of this contract (particularly paragraph (g) of the Government Property (Cost-Reimbursement, Time-and-Materials, or Labor-Hour Contracts) clause and paragraph (c) of the Insurance—Liability to Third Persons clause).

(c) Unless the flight crew members previously have been approved in writing by the Government Flight Representative, who has been authorized in accordance with the combined regulation entitled ''Contractor's Flight and Ground Operations'' (Air Force Regulation 55–22, Army Regulation 95–20, NAVAIR Instruction 3710.1C, and Defense Logistics Agency Manual 8210.1), the Contractor shall not be—

(1) Relieved of liability for damage, loss, or destruction of aircraft sustained during flight; or

(2) Reimbursed for liabilities to third persons for loss or damage to property or for death or bodily injury caused by aircraft during flight.

(d)(1) The loss, damage, or destruction of aircraft during flight in an amount exceeding $100,000 or 20 percent of the estimated cost of this contract, whichever is less, is subject to an equitable adjustment when the Contractor is not liable under—

(i) The Government Property (Cost-Reimbursement, Time-and-Materials, or Labor-Hour Contracts) clause, and

(ii) Paragraph (c) of this clause.

(2) The equitable adjustment under this contract for the resulting repair, restoration, or replacement of aircraft shall be made—

(i) In the estimated cost, the delivery schedule, or both; and

(ii) In the amount of any fee to be paid to the Contractor.

(3) In determining the amount of equitable adjustment in the fee, the Contracting Officer will consider any fault of the Contractor, its employees, or any subcontractor that materially contributed to the damage, loss, or destruction.

(4) Failure to agree on any adjustment shall be a dispute concerning a question of fact within the meaning of the Disputes clause of this contract.

(e) The Contractor agrees to be bound by the operating procedures contained in the combined regulation entitled ''Contractor's Flight and Found Operations'' in effect on the date of contract award.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 61 FR 50456, Sept. 26, 1996]

252.228–7003 Capture and detention.

As prescribed in 228.370(d), use the following clause:

CAPTURE AND DETENTION (DEC. 1991)

(a) As used in this clause—

(1) *Captured person* means any employee of the Contractor who is—

(i) Assigned to duty outside the United States for the performance of this contract; and

(ii) Found to be missing from his or her place of employment under circumstances that make it appear probable that the absence is due to the action of the force of any power not allied with the United States in a common military effort; or

(iii) Known to have been taken prisoner, hostage, or otherwise detained by the force of such power, whether or not actually engaged in employment at the time of capture; provided, that at the time of capture or detention, the person was either—

(A) Engaged in activity directly arising out of and in the course of employment under this contract; or

(B) Captured in an area where required to be only in order to perform this contract.

(2) A *period of detention* begins with the day of capture and continues until the captured person is returned to the place of employment, the United States, or is able to be returned to the jurisdiction of the United States, or until the person's death is established or legally presumed to have occurred by evidence satisfactory to the Contracting Officer, whichever occurs first.

(3) *United States* comprises geographically the 50 states and the District of Columbia.

(4) *War Hazards Compensation Act* refers to the statute compiled in chapter 12 of title 42, U.S. Code (sections 1701–1717), as amended.

(b) If pursuant to an agreement entered into prior to capture, the Contractor is obligated to pay and has paid detention benefits to a captured person, or the person's dependents, the Government will reimburse the Contractor up to an amount equal to the lesser of—

(1) Total wage or salary being paid at the time of capture due from the Contractor to the captured person for the period of detention; or

(2) That amount which would have been payable if the detention had occurred under circumstances covered by the War Hazards Compensation Act.

(c) The period of detention shall not be considered as time spent in contract performance, and the Government shall not be obligated to make payment for that time except as provided in this clause.

(d) The obligation of the Government shall apply to the entire period of detention, except that it is subject to the availability of funds from which payment can be made. The rights and obligations of the parties under this clause shall survive prior expiration, completion, or termination of this contract.

(e) The Contractor shall not be reimbursed under this clause for payments made if the employees were entitled to compensation for capture and detention under the War Hazards Compensation Act, as amended.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 57 FR 42633, Sept. 15, 1992

252.228–7004 Bonds or other security.

As prescribed in 228.170, use the following provision:

BONDS OR OTHER SECURITY (DEC. 1991)

(a) Offerors shall furnish a bid guarantee in the amount of $_____ with their bids. The offeror receiving notice of award shall furnish—

(1) A performance bond in the penal amount of $_____; and

(2) Payment in full of any sum due the Government.

(b) The Contractor shall furnish the performance bond to the Contracting Officer within ___ days after receipt of the notice of award. The Contracting Officer will not issue the notice to proceed until receipt of an acceptable performance bond and payment of any sum due the Government.

(c) Bonds supported by sureties whose names appear on the list contained in Treasury Department Circular 570 are acceptable. Performance bonds from individual sureties are acceptable if each person acting as a surety provides a SF 28, Affidavit of Individual Surety, and a pledge of assets acceptable to the Contracting Officer.

(End of provision)

252.228–7005 Accident reporting and investigation involving aircraft, missiles, and space launch vehicles.

As prescribed in 228.370(e), use the following clause:

ACCIDENT REPORTING AND INVESTIGATION INVOLVING AIRCRAFT, MISSILES, AND SPACE LAUNCH VEHICLES (DEC. 1991)

(a) The Contractor shall report promptly to the Administrative Contracting Officer all pertinent facts relating to each accident involving an aircraft, missile, or space launch vehicle being manufactured, modified, repaired, or overhauled in connection with this contract.

(b) If the Government conducts an investigation of the accident, the Contractor will cooperate and assist the Government's personnel until the investigation is complete.

(c) The Contractor will include a clause in subcontracts under this contract to require subcontractor cooperation and assistance in accident investigations.

(End of clause)

252.228–7006 Compliance with Spanish laws and insurance.

As prescribed at 228.370(f), use the following clause:

COMPLIANCE WITH SPANISH LAWS AND INSURANCE (JUNE 1997)

(a) The Contractor shall, without additional expense to the United States Government, comply with all applicable Spanish Government laws pertaining to sanitation, traffic, security, employment of labor, and all other laws relevant to the performance of this contract. The Contractor shall hold the United States Government harmless and free

from any liability resulting from the Contractor's failure to comply with such laws.

(b) The contractor shall, at its own expense, provide and maintain during the entire performance of this contract, all workmen's compensation, employees' liability, bodily injury insurance, and other required insurance adequate to cover the risk assumed by the Contractor. The Contractor shall indemnify and hold harmless the United States Government from liability resulting from all claims for damages as a result of death or injury to personnel or damage to real or personal property related to the performance of this contract.

(c) The Contractor agrees to represent in writing to the Contracting Officer, prior to commencement of work and not later than 15 days after the date of the Notice to Proceed, that the Contractor has obtained the required types of insurance in the following minimum amounts. The representation also shall state that the Contractor will promptly notify the Contracting Officer of any notice of cancellation of insurance or material change in insurance coverage that could affect the United States Government's interests.

Type of insurance	Coverage per person	Coverage per accident	Property damage
Comprehensive General Liability	$300,000	$1,000,000	$100,000

(d) The Contractor shall provide the Contracting Officer with a similar representation for all subcontractors that will perform work under this contract.

(e) Insurance policies required herein shall be purchased from Spanish insurance companies or other insurance companies legally authorized to conduct business in Spain. Such policies shall conform to Spanish laws and regulations and shall—

(1) Contain provisions requiring submission to Spanish law and jurisdiction of any problem that may arise with regard to the interpretation or application of the clauses and conditions of the insurance policy;

(2) Contain a provision authorizing the insurance company, as subrogee of the insured entity, to assume and attend to directly, with respect to any person damaged, the legal consequences arising from the occurrence of such damages;

(3) Contain a provision worded as follows: ''The insurance company waives any right of subrogation against the United States of America that may arise by reason of any payment under this policy.'';

(4) Not contain any deductible amount or similar limitation; and

(5) Not contain any provisions requiring submission to any type of arbitration.

(End of clause)

[62 FR 34132, June 24, 1997]

252.229–7000 Invoices exclusive of taxes or duties.

As prescribed in 229.402–1, use the following clause:

INVOICES EXCLUSIVE OF TAXES OR DUTIES (JUNE 1997)

Invoices submitted in accordance with the terms and conditions of this contract shall be exclusive of all taxes or duties for which relief is available.

(End of clause)

[62 FR 34132, June 24, 1997]

252.229–7001 Tax relief.

As prescribed in 229.402–70(a), use the following clause:

TAX RELIEF (JUNE 1997)

(a) Prices set forth in this contract are exclusive of all taxes and duties from which the United States Government is exempt by virtue of tax agreements between the United States Government and the Contractor's government. The following taxes or duties have been excluded from the contract price:

NAME OF TAX: (Offeror Insert) RATE (PERCENTAGE): (Offeror Insert)

(b) The Contractor's invoice shall list separately the gross price, amount of tax deducted, and net price charged.

(c) When items manufactured to United States Government specifications are being acquired, the Contractor shall identify the materials or components intended to be imported in order to ensure that relief from import duties is obtained. If the Contractor intends to use imported products from inventories on hand, the price of which includes a factor for import duties, the Contractor shall ensure the United States Government's exemption from these taxes. The Contractor may obtain a refund of the import duties from its government or request the duty-free import of an amount of supplies or components corresponding to that used from inventory for this contract.

(End of clause)

ALTERNATE I (JUNE 1997)

As prescribed in 229.402–70(a), add the following paragraph (d) to the basic clause:

(d) Tax relief will be claimed in Germany pursuant to the provisions of the Agreement Between the United States of America and

Germany Concerning Tax Relief to be Accorded by Germany to United States Expenditures in the Interest of Common Defense. The Contractor shall use Abwicklungsschein fuer abgabenbeguenstigte Lieferungen/Leistungen nach dem Offshore Steuerabkommen (Performance Certificate for Tax-Free Deliveries/Performance according to the Offshore Tax Relief Agreement) or other documentary evidence acceptable to the German tax authorities. All purchases made and paid for on a tax-free basis during a 30-day period may be accumulated, totaled, and reported as tax-free.

[62 FR 34132, June 24, 1997]

252.229–7002 Customs exemptions (Germany).

As prescribed in 229.402–70(b), use the following clause:

CUSTOMS EXEMPTIONS (GERMANY) (JUNE 1997)

Imported products required for the direct benefit of the United States Forces are authorized to be acquired duty-free by the Contractor in accordance with the provisions of the Agreement Between the United States of America and Germany Concerning Tax Relief to be Accorded by Germany to United States Expenditures in the Interest of Common Defense.

(End of clause)

[62 FR 34133, June 24, 1997]

252.229–7003 Tax exemptions (Italy).

As prescribed in 229.402–70(c), use the following clause:

TAX EXEMPTIONS (ITALY) (JUNE 1997)

(a) The Contractor represents that the contract prices, including the prices in subcontracts awarded hereunder, do not include taxes from which the United States Government is exempt.

(b) The United States Government is exempt from payment of Imposta Valore Aggiunto (IVA) tax in accordance with Article 72 of the IVA implementing decree on all supplies and services sold to United States Military Commands in Italy.

(1) Upon receipt of the invoice, the paying office will stamp the following statement on one copy of the invoice:

''I certify that this invoice is true and correct and reflects expenditures made in Italy for the Common Defense by the United States Government pursuant to international agreements. The amount to be paid does not include the IVA tax, because this transaction is not subject to the tax in accordance with Article 72 of Decree Law 633, dated October 26, 1972.''

(2) This certified copy, signed by an authorized Government official, will be returned together with payment to the Contractor. The payment will not include the amount of IVA tax.

(3) The Contractor must retain this copy of the invoice with the representation to substantiate non-payment of the IVA tax.

(c) In addition to the IVA tax, purchases by the United States Forces in Italy are exempt from the following taxes:

(1) Imposta di Fabbricazione (Production Tax for Petroleum Products).

(2) Imposta di Consumo (Consumption Tax for Electrical Power).

(3) Dazi Doganali (Customs Duties).

(4) Tassa di Sbarco e d'Imbarco sulle Merci Transportate per Via Aerea e per Via Maritima (Port Fees).

(5) Tassa de Circolazione sui Veicoli (Vehicle Circulation Tax).

(6) Imposta di Registro (Registration Tax).

(7) Imposta di Bollo (Stamp Tax).

(d) The Contractor's administrative procedures for claiming and validating the exemptions are as follows:

(1) Contract offer price shall not reflect IVA or any other tax or duty.

(2) Contract number must be set forth on Contractor invoices, which should state the exemptions claimed pursuant to Article 72 of Decree Law 633, dated October 26, 1972, for IVA exemption.

(3) Fiscal code for appropriated funds payments by Aviano Air Base is: 91000190933.

(4) Questions may be addressed to the Ministry of Finance, 11th District, Rome (06) 5910982.

(End of clause)

[62 FR 34133, June 24, 1997; 62 FR 49305, Sept. 19, 1997]

252.229–7004 Status of contractors as a direct contractor (Spain).

As prescribed in 229.402–70(d), use the following clause:

STATUS OF CONTRACTOR AS A DIRECTOR CONTRACT (SPAIN) (JUNE 1997)

(a) ''Direct Contractor,'' as used in this clause, means an individual, company, or entity with whom an agency of the United States Department of Defense has executed a written agreement that allows duty-free import of equipment, materials, and supplies into Spain for the construction, development, maintenance, and operation of Spanish-American installations and facilities.

(b) The Contractor is hereby designated as a Direct Contractor under the provisions of Complementary Agreement 5, articles 11, 14, 15, 17, and 18 of the Agreement on Friendship, Defense and Cooperation between the United States Government and the Kingdom

of Spain, dated July 2, 1982. The Agreement relates to contacts to be performed in whole or part in Spain, the provisions of which are hereby incorporated into and made a part of this contract by reference.

(c) The Contractor shall apply to the appropriate Spanish authorities for approval of status as a Direct Contractor in order to complete duty-free import of non-Spanish equipment, materials, and supplies represented as necessary for contract performance by the Contracting Officer. Orders for equipment, materials, and supplies placed prior to official notification of such approval shall be at the Contractor's own risk. The Contractor must submit its documentation in sufficient time to permit processing by the appropriate United States and Spanish Government agencies prior to the arrival of the equipment, material, or supplies in Spain. Seasonal variations in processing times are common, and the Contractor should program its projects accordingly. Any delay or expense arising directly or indirectly from this process shall not excuse untimely performance (except as expressly allowed in other provisions of this contract), constitute a direct or constructive change, or otherwise provide a basis for additional compensation or adjustment of any kind.

(d) To ensure that all duty-free imports are properly accounted for, exported, or disposed of, in accordance with Spanish law, the Contractor shall obtain a written bank letter of guaranty payable to the Treasurer of the United States, or such other authority as may be designated by the Contracting Officer, in the amount set forth in paragraph (g) of this clause, prior to effecting any duty-free imports for the performance of this contract.

(e) If the Contractor fails to obtain the required guaranty, the Contractor agrees that the Contracting Officer may withhold a portion of the contract payments in order to establish a fund in the amount set forth in paragraph (g) of this clause. The fund shall be used for the payment of import taxes in the event that the Contractor fails to properly account for, export, or dispose of equipment, materials, or supplies imported on a duty-free basis.

(f) The amount of the bank letter of guaranty or size of the fund required under paragraph (d) or (e) of this clause normally shall be 5 percent of the contract value. However, if the Contractor demonstrates to the Contracting Officer's satisfaction that the amount retained by the United States Government or guaranteed by the bank is excessive, the amount shall be reduced to an amount commensurate with contingent import tax and duty-free liability. This bank guaranty or fund shall not be released to the Contractor until the Spanish General Directorate of Customs verifies the accounting, export, or disposition of the equipment, material, or supplies imported on a duty-free basis.

(g) The amount required under paragraph (d), (e), or (f) of this clause is (*Contracting Officer insert amount at time of contract award).*

(h) The Contractor agrees to insert the provisions of this clause, including this paragraph (h), in all subcontracts.

(End of clause)

[62 FR 34133, June 24, 1997]

252.229–7005 Tax exemptions (Spain).

As prescribed in 229.402–70(e), use the following clause:

TAX EXEMPTIONS (SPAIN) (JUNE 1997)

(a) The Contractor represents that the contract prices, including subcontract prices, do not include the taxes identified herein, or any other taxes from which the United States Government is exempt.

(b) In accordance with tax relief agreements between the United States Government and the Spanish Government, and because the incumbent contract arises from the activities of the United States Forces in Spain, the contract will be exempt from the following excise, luxury, and transaction taxes:

(1) Derechos de Aduana (Customs Duties).

(2) Impuesto de Compensacion a la Importacion (Compensation Tax on Imports).

(3) Transmissiones Patrionomiales (Property Transfer Tax).

(4) Impuesto Sobre el Lujo (Luxury Tax).

(5) Actos Juridocos Documentados (Legal Official Transactions).

(6) Impuesto Sobre el Trafico de Empresas (Business Trade Tax).

(7) Impuestos Especiales de Fabricacion (Special Products Tax).

(8) Impuesto Sobre el Petroleo y Derivados (Tax on Petroleum and its By-Products).

(9) Impuesto Sobre el Uso de Telefona (Telephone Tax).

(10) Impuesto General Sobre la Renta de Sociedades y demas Entidades Juridicas (General Corporation Income Tax).

(11) Impuesto Industrial (Industrial Tax).

(12) Impuesto de Rentas Sobre el Capital (Capital Gains Tax).

(13) Plus Vailia (Increase on Real Property).

(14) Contribucion Territorial Urbana (Metropolitan Real Estate Tax).

(15) Contribucion Territorial Rustica y Pecuaria (Farmland Real Estate Tax).

(16) Impuestos de la Diputacion (County Service Charges).

(17) Impuestos Municipal y Tasas Parafiscales (Municipal Tax and Charges).

(End of clause)

[62 FR 34133, June 24, 1997]

252.229–7006 Value added tax exclusion (United Kingdom).

As prescribed in 229.402–70(f), use the following clause:

VALUE ADDED TAX EXCLUSION (UNITED KINGDOM) (JUNE 1997)

The supplies or services identified in this contract are to be delivered at a price exclusive of value added tax under arrangements between the appropriate United States authorities and Her Majesty's Customs and Excise (Reference Priv 46/7). By executing this contract, the Contracting Officer certifies that these supplies or services are being purchased for United States Government official purposes only.

(End of clause)

[62 FR 34134, June 24, 1997]

252.229–7007 Verification of United States receipt of goods.

As prescribed in 229.402–70(g), use the following clause:

VERIFICATION OF UNITED STATES RECEIPT OF GOODS (JUNE 1997)

The Contractor shall insert the following statement on all Material Inspection and Receiving Reports (DD Form 250 series) for Contracting Officer approval: ''I certify that the items listed on this invoice have been received by the United States.''

(End of clause)

[62 FR 34134, June 24, 1997]

252.229–7008 Relief from import duty (United Kingdom).

As prescribed in 229.402–70(h), use the following clause:

RELIEF FROM IMPORT DUTY (UNITED KINGDOM) (JUNE 1997)

Any import dutiable articles, components, or raw materials supplied to the United States Government under this contract shall be exclusive of any United Kingdom import duties. Any imported items supplied for which import duty already has been paid will be supplied at a price exclusive of the amount of import duty paid. The Contractor is advised to contact Her Majesty's (HM) Customs and Excise to obtain a refund upon completion of the contract (Reference HM Customs and Excise Notice No. 431, February 1973, entitled ''Relief from Customs Duty and/or Value Added Tax on United States Government Expenditures in the United Kingdom'').

(End of clause)

[62 FR 34134, June 24, 1997]

252.229–7009 Relief from customs duty and value added tax on fuel (passenger vehicles) (United Kingdom).

As prescribed in 229.402–70(i), use the following clause:

RELIEF FROM CUSTOMS DUTY AND VALUE ADDED TAX ON FUEL (PASSENGER VEHICLES) (UNITED KINGDOM) (JUNE 1997)

(a) Pursuant to an agreement between the United States Government and Her Majesty's (HM) Customs and Excise, fuels and lubricants used by passenger vehicles (except taxis) in the performance of this contract will be exempt from customs duty and value added tax. Therefore, the procedures outlined in HM Customs and Excise Notice No. 431B, August 1982, and any amendment thereto, shall be used to obtain relief from both customs duty and value added tax for fuel used under the contract. These procedures shall apply to both loaded and unloaded miles. The unit prices shall be based on the recoupment by the Contractor of customs duty in accordance with the following allowances:

(1) Vehicles (except taxis) with a seating capacity of less than 29, one gallon for every 27 miles.

(2) Vehicles with a seating capacity of 29–53, one gallon for every 13 miles.

(3) Vehicles with a seating capacity of 54 or more, one gallon for every 10 miles.

(b) In the event the mileage of any route is increased or decreased within 10 percent, resulting in no change in route price, the customs duty shall be reclaimed from HM Customs and Excise on actual mileage performed.

(End of clause)

[62 FR 34134, June 24, 1997]

252.229–7010 Relief from customs duty on fuel (United Kingdom).

As prescribed in 229.402–70(j), use the following clause:

RELIEF FROM CUSTOMS DUTY ON FUEL (UNITED KINGDOM) (JUNE 1997)

(a) Pursuant to an agreement between the United States Government and Her Majesty's (HM) Customs and Excise, it is possible to obtain relief from customs duty on

fuels and lubricants used in support of certain contracts. If vehicle fuels and lubricants are used in support of this contract, the Contractor shall seek relief from customs duty in accordance with HM Customs Notice No. 431, February 1973, entitled ''Relief from Customs Duty and/or Value Added Tax on United States Government Expenditures in the United Kingdom.'' Application should be sent to the Contractor's local Customs and Excise Office.

(b) Specific information should be included in the request for tax relief, such as the number of vehicles involved, types of vehicles, rating of vehicles, fuel consumption, estimated mileage per contract period, and any other information that will assist HM Customs and Excise in determining the amount of relief to be granted.

(c) Within 30 days after the award of this contract, the Contractor shall provide the Contracting Officer with evidence that an attempt to obtain such relief has been initiated. In the event the Contractor does not attempt to obtain relief within the time specified, the Contracting Officer may deduct from the contract price the amount of relief that would have been allowed if HM Customs and Excise had favorably considered the request for relief.

(d) The amount of any rebate granted by HM Customs and Excise shall be paid in full to the United States Government. Checks shall be made payable to the Treasurer of the United States and forwarded to the Administrative Contracting Officer.

(End of clause)

[62 FR 34134, June 24, 1997]

252.231–7000 Supplemental cost principles.

As prescribed in 231.100–70, use the following clause:

SUPPLEMENTAL COST PRINCIPLES (DEC. 1991)

When the allowability of costs under this contract is determined in accordance with part 31 of the Federal Acquisition Regulation (FAR), allowability shall also be determined in accordance with part 231 of the Defense FAR Supplement, in effect on the date of this contract.

(End of clause)

252.232–7000 Advance payment pool.

As prescribed in 232.412–70(a), use the following clause:

ADVANCE PAYMENT POOL (DEC. 1991)

(a) Notwithstanding any other provision of this contract, advance payments will be made for contract performance in accordance with the Determinations, Findings, and Authorization for Advance payment dated _____.

(b) Payments made in accordance with this clause shall be governed by the terms and conditions of the Advance Payment Pool Agreement between the United States of America and (*insert the name of the contractor*). The Agreement is incorporated in the contract by reference.

(End of clause)

252.232–7001 Disposition of payments.

As prescribed in 232.412–70(b), use the following clause:

DISPOSITION OF PAYMENTS (DEC. 1991)

Payment will be by a dual payee Treasury check made payable to the contractor or the (*insert the name of the disbursing office in the advance payment pool agreement*), and will be forwarded to that disbursing office for appropriate disposition.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 57 FR 42633, Sept. 15, 1992]

252.232–7002 Progress payments for foreign military sales acquisitions.

As prescribed in 232.502–4–70(a), use the following clause:

PROGRESS PAYMENTS FOR FOREIGN MILITARY SALES ACQUISITIONS (DEC. 1991)

If this contract includes foreign military sales (FMS) requirements, the Contractor shall—

(a) Submit a separate progress payment request for each progress payment rate; and

(b) Submit a supporting schedule showing—

(1) The amount of each request distributed to each country's requirements; and

(2) Total price per contract line item applicable to each separate progress payment rate.

(c) Identify in each progress payment request the contract requirements to which it applies (i.e., FMS or U.S.);

(d) Calculate each request on the basis of the prices, costs (including costs to complete), subcontractor progress payments, and progress payment liquidations of the contract requirements to which it applies; and

(e) Distribute costs among contract line items and countries in a manner acceptable to the Administrative Contracting Officer.

(End of clause)

252.232–7003 Flexible progress payments.

As prescribed in 232.502–4–70(b), use the following clause:

FLEXIBLE PROGRESS PAYMENTS (DEC. 1991)

(a) This contract is subject to flexible progress payment procedures as set forth in this clause and Defense FAR Supplement 232.502–1–71.

(1) The progress payment rate of this contract is _____ percent. This percentage applies instead of the customary uniform progress payment rate and liquidation rate of the Progress Payments clause.

(2) The progress payment rate of this contract was determined by the DoD Cash Flow Computer Model (*name*) dated _____, using percent as the minimum rate for the Contractor's investment (as a weighted average of costs) in its work in process inventory over the life of the contract.

(b) If actual and projected cash flow data generated during contract performance reveal that the customary flexible progress payment rate will result in a Contractor investment in work in process inventory more than two percentage points higher or lower than the minimum rate of Contractor investment specified in paragraph (a)(2) of this clause, the progress payment rate shall be redetermined by using the DoD Cash Flow Computer Model. Unless it contained an error, the version of the DoD Cash Flow Computer Model identified in paragraph (a)(2) of this clause shall be used for any redetermination. The customary flexible progress payment rate shall not be less than the customary uniform progress payment rate that would have applied to this contract absent flexible progress payment procedures, and the progress payment rate shall not be greater than 100 percent.

(c) Notwithstanding paragraph (b) of this clause, if at any time the flexible progress payment rate is determined to be overstated because any factual data submitted by the Contractor in support of the rate computation was not current, accurate, and complete at the time the flexible progress payment rate was established, the progress payment rate shall be reduced to the rate that should have been calculated using the model specified in paragraph (a)(2) of this clause. The Contractor shall pay interest in accordance with paragraph (d) of this clause on all resulting overpayments, computed from the date of the Government's overpayment, to the date of liquidation of the overpayment. Payment of any unliquidated overpayment and interest shall be due 30 days after the date of the first written demand for payment.

(d) Interest shall be simple interest at the rate established by the Secretary of the Treasury as provided in section 12 of the Contract Disputes Act of 1978 (Pub. L. 95–563), which is applicable at the time the Government made the overpayment, and then at the rate applicable for each six month period as fixed by the Secretary, until the overpayment is liquidated.

(e) Flexible progress payment terms will be made available to subcontractors in accordance with paragraph (j) of the Progress Payments clause and Defense FAR Supplement 232.502–1–71(b)(4).

(End of clause)

252.232–7004 DoD progress payment rates.

As prescribed in 232.502–4–70 (b) and (c), use the following clause:

DOD PROGRESS PAYMENT RATES (FEB 1996)

(a) If the contractor is a large business, the Progress Payments clause of this contract is modified to change each mention of the progress payment rate and liquidation rate (including paragraph (k), *Limitations on Undefinitized Contract Actions)* to 75 percent.

(b) If the contractor is a small business, the Progress Payments clause of this contract is modified to change each mention of the progress payment rate and liquidation rate (excepting paragraph (k), *Limitations on Undefinitized Contract Actions*) to 90 percent.

(c) If the contractor is a small disadvantaged business, the Progress Payments clause of this contract is modified to change each mention of the progress payment rate and liquidation rate (excepting paragraph (k), *Limitations on Undefinitized Contract Actions*) to 95 percent.

(d) The above rates are the customary uniform progress payment rates for DoD contracts.

(End of clause)

[56 FR 67221, Dec. 30, 1991, as amended at 58 FR 62046, Nov. 24, 1993; 61 FR 7750, Feb. 29, 1996]

252.232–7005 Reimbursement of subcontractor advance payments—DoD pilot mentor-protege program.

As prescribed in 232.412–70(c), use the following clause:

REIMBURSEMENT OF SUBCONTRACTOR ADVANCE PAYMENTS—DOD PILOT MENTOR-PROTEGE PROGRAM (DEC. 1991)

(a) The Government will reimburse the Contractor for any advance payments made by the Contractor, as a mentor firm, to a small disadvantaged business, as a protege

firm, pursuant to an approved mentor-protege agreement, provided—

(1) The Contractor's subcontract with the protege firm includes a provision substantially the same as FAR 52.232–12, Advance Payments;

(2) The Contractor has administered the advance payments in accordance with the policies of FAR subpart 32.4; and

(3) The Contractor agrees that any financial loss resulting from the failure or inability of the protege firm to repay any unliquidated advance payments is the sole financial responsibility of the Contractor.

(b) For a fixed price type contract, advance payments made to a protege firm shall be paid and administered as if there were 100 percent progress payments. The Contractor shall include as a separate attachment with each Standard Form (SF) 1443, Contractor's Request for Progress Payment, a request for reimbursement of advance payments made to a protege firm. The attachment shall provide a separate calculation of lines 14a through 14e of SF 1443 for each protege, reflecting the status of advance payments made to that protege.

(c) For cost reimbursable, contracts, reimbursement of advance payments shall be made via public voucher. The Contractor shall show the amounts of advance payments made to each protege on the public voucher, in the form and detail directed by the cognizant contracting officer or contract auditor.

(End of clause)

[56 FR 67221, Dec. 30, 1991, as amended at 57 FR 53602, Nov. 12, 1992]

252.232–7006 Reduction or suspension of contract payments upon finding of fraud.

As prescribed in 232.111–70, use the following clause:

REDUCTION OR SUSPENSION OF CONTRACT PAYMENTS UPON FINDING OF FRAUD (AUG. 1992)

(a) 10 U.S.C. 2307(e) permits the head of the agency to reduce or suspend further payments to the Contractor upon a written determination by the agency head that substantial evidence exists that the Contractors request for advance, partial, or progress payments is based on fraud. The provisions of 10 U.S.C. 2307(e) are in addition to any other rights or remedies provided the Government by law or under contract.

(b) Actions taken by the Government in accordance with 10 U.S.C. 2307(e) shall not constitute an excusable delay under the Default clause of this contract or otherwise relieve the Contractor of its obligations to perform under this contract.

(End of clause)

[57 FR 42633, Sept. 15, 1992]

252.232–7007 Limitation of Government's obligation.

As prescribed in 232.705–70, use the following clause:

LIMITATION OF GOVERNMENT'S OBLIGATION (AUG. 1993)

(a) Contract line item(s) _____* through _____* are incrementally funded. For these item(s), the sum of $_____* of the total price is presently available for payment and allotted to this contract. An allotment schedule is set forth in paragraph (i) of this clause.

(b) For item(s) identified in paragraph (a) of this clause, the Contractor agrees to perform up to the point at which the total amount payable by the Government, including reimbursement in the event of termination of those item(s) for the Government's convenience, approximates the total amount currently allotted to the contract. The Contractor will not be obligated to continue work on those item(s) beyond that point. The Government will not be obligated in any event to reimburse the Contractor in excess of the amount allotted to the contract for those item(s) regardless of anything to the contrary in the clause entitled ''Termination for Convenience of the Government.'' As used in this clause, the total amount payable by the Government in the event of termination of applicable contract line item(s) for convenience includes costs, profit, and estimated termination settlement costs for those items(s).

(c) Notwithstanding the dates specified in the allotment schedule in paragraph (i) of this clause, the Contractor will notify the Contracting Officer in writing at least ninety days prior to the date when, in the Contractor's best judgment, the work will reach the point at which the total amount payable by the Government, including any cost for termination for convenience, will approximate 85 percent of the total amount then allotted to the contract for performance of the applicable item(s). The notification will state (1) the estimated date when that point will be reached and (2) an estimate of additional funding, if any, needed to continue performance of applicable line items up to the next scheduled date for allotment of funds identified in paragraph (i) of this clause, or to a mutually agreed upon substitute date. The notification will also advise the Contracting Officer of the estimated amount of additional funds that will be required for the timely performance of the item(s) funded pursuant to this clause, for a subsequent period as may be specified in the allotment schedule in paragraph (i) of this

clause, or otherwise agreed to by the parties. If after such notification additional funds are not allotted by the date identified in the Contractor's notification, or by an agreed substitute date, the Contracting Officer will terminate any item(s) for which additional funds have not been allotted, pursuant to the clause of this contract entitled ''Termination for Convenience of the Government.''

(d) When additional funds are allotted for continued performance of the contract line item(s) identified in paragraph (a) of this clause, the parties will agree as to the period of contract performance which will be covered by the funds. The provisions of paragraph (b) through (d) of this clause will apply in like manner to the additional allotted funds and agreed substitute date, and the contract will be modified accordingly.

(e) If, solely by reason of failure of the Government to allot additional funds, by the dates indicated below, in amounts sufficient for timely performance of the contract line item(s) identified in paragraph (a) of this clause, the Contractor incurs additional costs or is delayed in the performance of the work under this contract and if additional funds are allotted, an equitable adjustment will be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the item(s), or in the time of delivery, or both. Failure to agree to any such equitable adjustment hereunder will be a dispute concerning a question of fact within the meaning of the clause entitled ''Disputes.''

(f) The Government may at any time prior to termination allot additional funds for the performance of the contract line item(s) identified in paragraph (a) of this clause.

(g) The termination provisions of this clause do not limit the rights of the Government under the clause entitled ''Default.'' The provisions of this clause are limited to the work and allotment of funds for the contract line item(s) set forth in paragraph (a) of this clause. This clause no longer applies once the contract is fully funded except with regard to the rights or obligations of the parties concerning equitable adjustments negotiated under paragraphs (d) or (e) of this clause.

(h) Nothing in this clause affects the right of the Government to terminate this contract pursuant to the clause of this contract entitled ''Termination for Convenience of the Government.''

(i) The parties contemplate that the Government will allot funds to this contract in accordance with the following schedule:

On execution of contract.....$
(month) (day), 199x .....$
(month) (day), 199y .....$
(month) (day), 199z .....$

(End of clause)

ALTERNATE I (AUG. 1993)

If only one line item will be incrementally funded, substitute the following paragraph (a) for paragraph (a) of the basic clause.

(a) Contract line item _____ is incrementally funded. The sum of $_____* is presently available for payment and allotted to this contract. An allotment schedule is contained in paragraph (i) of this clause.

*To be inserted after negotiation.

[58 FR 46093, Sept. 1, 1993]

252.232–7008 Assignment of claims (overseas).

As prescribed in 232.806(a)(1), use the following clause:

ASSIGNMENT OF CLAIMS (OVERSEAS) (JUNE 1997)

(a) No claims for monies due, or to become due, shall be assigned by the Contractor unless—

(1) Approved in writing by the Contracting Officer;

(2) Made in accordance with the laws and regulations of the United States of America; and

(3) Permitted by the laws and regulations of the Contractor's country.

(b) In no event shall copies of this contract of any plans, specifications, or other similar documents relating to work under this contract, if marked ''Top Secret,'' ''Secret,'' or ''Confidential'' be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive such documents. However, a copy of any part or all of this contract so marked may be furnished, or any information contained herein may be disclosed, to such assignee upon the Contracting Officer's prior written authorization.

(c) Any assignment under this contract shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment may be made to one party as agent or trustee for two or more parties participating in such financing. On each invoice or voucher submitted for payment under this contract to which any assignment applies, and for which direct payment thereof is to be made to an assignee, the Contractor shall—

(1) Identify the assignee by name and complete address; and

(2) Acknowledge the validity of the assignment and the right of the named assignee to receive payment in the amount invoiced or vouchered.

(End of clause)

[62 FR 34134, June 24, 1997]

252.233–7000 [Reserved]

252.233–7001 Choice of law (overseas).

As prescribed in 233.215–70, use the following clause:

CHOICE OF LAW (OVERSEAS) (JUNE 1997)

This contract shall be construed and interpreted in accordance with the substantive laws of the United States of America. By the execution of this contract, the Contractor expressly agrees to waive any rights to invoke the jurisdiction of local national courts where this contract is performed and agrees to accept the exclusive jurisdiction of the United States Armed Services Board of Contract Appeals and the United States Court of Federal Claims for hearing and determination of any and all disputes that may arise under the Disputes clause of this contract.

(End of clause)

[62 FR 34135, June 24, 1997]

252.234–7000 Notice of earned value management system.

As prescribed in 234.005–71, use the following provision:

NOTICE OF EARNED VALUE MANAGEMENT SYSTEM (MAR 1997)

(a) The offeror shall provide documentation that the cognizant Administrative Contracting Officer (ACO) has recognized that the proposed earned value management system (EVMS) complies with the EVMS criteria of DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs, or that the proposed cost/schedule control system has been accepted by the Government.

(b) If the offeror proposes to use a system that does not meet the requirements of paragraph (a) of this provision, the offeror shall submit a comprehensive plan for compliance with the EVMS criteria.

(1) The plan shall—

(A) Describe the EVMS the offeror intends to use in performance of the contract;

(B) Distinguish between the offeror's existing management system and modifications proposed to meet the criteria;

(C) Describe the management system and its application in terms of the 32 EVMS criteria;

(D) Describe the proposed procedure for administration of the criteria as applied to subcontractors; and

(E) Provide documentation describing the process and results of any third-party or self-evaluation of the system's compliance with EVMS criteria.

(2) The offeror shall provide information and assistance as required by the Contracting Officer to support review of the plan.

(3) The Government will review the offeror's plan for EVMS before contract award.

(c) Offerors shall identify the major subcontractors, or major subcontracted effort if major subcontractors have not been selected, planned for application of the criteria. The prime contractor and the Government shall agree to subcontractors selected for application of the EVMS criteria.

(End of provision)

[62 FR 9991, Mar. 5, 1997, as amended at 62 FR 34135, June 24, 1997; 62 FR 49305, Sept. 19, 1997]

252.234–7001 Earned value management system.

As prescribed in 234.005–71, use the following clause:

EARNED VALUE MANAGEMENT SYSTEM (MAR 1997)

(a) In the performance of this contract, the Contractor shall use an earned value management system (EVMS) meeting the criteria provided in DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MATs) Acquisition Programs.

(b) If the Contractor has an EVMS that has been recognized by the cognizant Administrative Contracting Officer (ACO) as complying with the EVMS criteria (or an existing cost/schedule control system (C/SCS) that has been accepted by the Government), the Contractor shall apply the system to this contract within 60 calendar days after contract award or as otherwise agreed to by the parties.

(c) If the Contractor does not have an EVMS that has been recognized by the cognizant ACO as complying with EVMS criteria (or does not have an existing C/SCS that has been accepted by the Government), the Contractor shall be prepared to demonstrate to the ACO that the EVMS complies with the EVMS criteria referenced in paragraph (a) of this clause.

(d) The Government may require an integrated baseline review within 180 calendar days after (1) contract award, (2) the exercise of significant contract options, or (3) the incorporation of major modifications. The purpose of the integrated baseline review is for the Government and the Contractor to jointly assess areas, such as the Contractor's planning, to ensure complete coverage of the

statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.

(e) Unless a waiver is granted by the ACO, Contractor proposed EVMS changes require approval of the ACO prior to implementation. The ACO shall advise the Contractor of the acceptability of such changes within 30 calendar days after receipt of the notice of proposed changes from the Contractor. If the advance approval requirements are waived by the ACO, the Contractor shall disclose EVMS changes to the ACO at least 14 calendar days prior to the effective date of implementation.

(f) The Contractor agrees to provide access to all pertinent records and data requested by the ACO or duly authorized representatives. Access is to permit Government surveillance to ensure that the EVMS complies, and continues to comply, with the criteria referenced in paragraph (a) of this clause.

(g) The Contractor shall require those subcontractors specified in the contract for application of the EVMS criteria to comply with the requirements of this clause.

(End of clause)

[62 FR 9992, Mar. 5, 1997, as amended at 62 FR 34135, June 24, 1997; 62 FR 49305, Sept. 19, 1997]

252.235–7000 Indemnification under 10 U.S.C. 2354—fixed price.

As prescribed in 235.070–3, use the following clause:

INDEMNIFICATION UNDER 10 U.S.C. 2354—FIXED PRICE (DEC. 1991)

(a) This clause provides for indemnification under 10 U.S.C. 2354 if the Contractor meets all the terms and conditions of this clause.

(b) Claims, losses, and damages covered—

(1) Claims by third persons for death, bodily injury, sickness, or disease, or the loss, damage, or lost use of property. Claims include those for reasonable expenses of litigation or settlement. The term *third persons* includes employees of the contractor;

(2) The loss, damage, and lost use of the Contractor's property, but excluding lost profit; and

(3) Loss, damage, or lost use of the Government's property.

(c) The claim, loss, or damage—

(1) Must arise from the direct performance of this contract;

(2) Must not be compensated by insurance or other means, or be within deductible amounts of the Contractor's insurance;

(3) Must result from an unusually hazardous risk as specifically defined in the contract;

(4) Must not result from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, managers, superintendents, or other equivalent representatives who have supervision or direction of—

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operations at any one plant or separate location where this contract is being performed; or

(iii) A separate and complete major industrial operation connected with the performance of this contract;

(5) Must not be a liability assumed under any contract or agreement (except for subcontracts covered by paragraph (h) of this clause), unless the Contracting Officer (or in contracts with the Department of the Navy, the Department) specifically approved the assumption of liability; and

(6) Must be certified as just and reasonable by the Secretary of the department or designated representative.

(d) The Contractor shall buy and maintain, to the extent available, insurance against unusually hazardous risks in the form, amount, period(s) of time, at the rate(s), and with such insurers, as the Contracting Officer (or, for Navy contracts, the Department) may from time to time require and approve. If the cost of this insurance is higher than the cost of the insurance the Contractor had as of the date of the contract, the Government shall reimburse the Contractor for the difference in cost, as long as it is properly allocable to this contract and is not included in the contract price. The Government shall not be liable for claims, loss, or damage if insurance was available and is either required or approved under this paragraph.

(e) A reduction of the insurance coverage maintained by the Contractor on the date of the execution of this contract shall not increase the Government's liability under this clause unless the Contracting Officer consents, and the contract price is equitably adjusted, if appropriate, to reflect the Contractor's consideration for the Government's assumption of increased liability.

(f) *Notice.* The Contractor shall—

(1) Promptly notify the Contracting Officer of any occurrence, action, or claim that might trigger the Government's liability under this clause;

(2) Furnish the proof or evidence of any claim, loss, or damage in the form and manner that the Government requires; and

(3) Immediately provide copies of all pertinent papers that the Contractor receives or has received.

(g) The Government may direct, participate in, and supervise the settlement or defense of the claim or action. The Contractor shall comply with the Government's directions and execute any authorizations required.

(h) *Flowdown.* The Government shall indemnify the Contractor if the Contractor has an obligation to indemnify a subcontractor under any subcontract at any tier under this contract for the unusually hazardous risk identified in this contract only if—

(1) The Contracting Officer gave prior written approval for the Contractor to provide in a subcontract for the Contractor to indemnify the subcontractor for unusually hazardous risks defined in this contract;

(2) The Contracting Officer approved those indemnification provisions;

(3) The subcontract indemnification provisions entitle the Contractor, or the Government, or both, to direct, participate in, and supervise the settlement or defense of relevant actions and claims; and

(4) The subcontract provides the same rights and duties, the same provisions for notice, furnishing of papers and the like, between the Contractor and the subcontractor, as exist between the Government and the Contractor under this clause.

(i) The Government may discharge its obligations under paragraph (h) of this clause by making payments directly to subcontractors or to persons to whom the subcontractors may be liable.

(j) The rights and obligations of the parties under this clause shall survive the termination, expiration, or completion of this contract.

(End of clause)

252.235–7001 Indemnification under 10 U.S.C. 2354—cost reimbursement.

As prescribed in 235.070–3, use the following clause:

INDEMNIFICATION UNDER 10 U.S.C. 2354—COST REIMBURSEMENT (DEC. 1991)

(a) This clause provides for indemnification under 10 U.S.C. 2354 if the Contractor meets all the terms and conditions of this clause.

(b) Claims, losses, and damages covered—

(1) Claims by third persons for death, bodily injury, sickness, or disease, or the loss, damage, or lost use of property. Claims include those for reasonable expenses of litigation or settlement. The term ''third persons'' includes employees of the Contractor;

(2) The loss, damage, and lost use of the Contractor's property, but excluding lost profit; and

(3) Loss, damage, or lost use of the Government's property.

(c) The claim, loss, or damage—

(1) Must arise from the direct performance of this contract;

(2) Must not be compensated by insurance or other means, or be within deductible amounts of the Contractor's insurance;

(3) Must result from an unusually hazardous risk as specifically defined in the contract;

(4) Must not result from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, managers, superintendents, or other equivalent representatives who have supervision or direction of—

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operations at any one plant or separate location where this contract is being performed; or

(iii) A separate and complete major industrial operation connected with the performance of this contract;

(5) Must not be a liability assumed under any contract or agreement (except for subcontracts covered by paragraph (i) of this clause), unless the Contracting Officer (or in contracts with the Department of the Navy, the Department) specifically approved the assumption of liability; and

(6) Must be certified as just and reasonable by the Secretary of the department or designated representative.

(d) A reduction of the insurance coverage maintained by the Contractor on the date of the execution of this contract shall not increase the Government's liability under this clause unless the Contracting Officer consents, and the contract price is equitably adjusted, if appropriate, to reflect the Contractor's consideration for the Government's assumption of increased liability.

(e) *Notice.* The Insurance—Liability to Third Persons clause of this contract applies also to claims under this clause. In addition, the Contractor shall—

(1) Promptly notify the Contracting Officer of any occurrence, action, or claim that might trigger the Government's liability under this clause;

(2) Furnish the proof or evidence of any claim, loss, or damage in the form and manner that the Government requires; and

(3) Immediately provide copies of all pertinent papers that the contractor receives or has received.

(f) The Government may direct, participate in, and supervise the settlement or defense of the claim or action. The Contractor shall comply with the Government's directions, and execute any authorizations required.

(g) The Limitation of Cost clause of this contract does not apply to the Government's obligations under this clause. The obligations under this clause are excepted from the release required by the Allowable Cost, Fee, and Payment clause of this contract.

(h) Under this clause, a claim, loss, or damage arises from the direct performance of this contract if the cause of the claim, loss,

or damage occurred during the period of performance of this contract or as a result of the performance of this contract.

(i) *Flowdown.* The Government shall indemnify the Contractor if the Contractor has an obligation to indemnify a subcontractor under any subcontract at any tier under this contract for the unusually hazardous risk identified in this contract only if—

(1) The Contracting Officer gave prior written approval for the Contractor to provide in a subcontract for the Contractor to indemnify the subcontractor for unusually hazardous risks defined in this contract;

(2) The Contracting Officer approved those indemnification provisions;

(3) The subcontract indemnification provisions entitle the Contractor, or the Government, or both, to direct, participate in, and supervise the settlement or defense of relevant actions and claims; and

(4) The subcontract provides the same rights and duties, the same provisions for notice, furnishing of paper and the like, between the Contractor and the subcontractor, as exist between the Government and the Contractor under this clause.

(j) The Government may discharge its obligations under paragraph (i) of this clause by making payments directly to subcontractors or to persons to whom the subcontractors may be liable.

(k) The rights and obligations of the parties under this clause shall survive the termination, expiration, or completion of this contract.

(End of clause)

252.235–7002 Animal welfare.

As prescribed in 235.071(a), use the following clause:

ANIMAL WELFARE (DEC. 1991)

(a) The Contractor shall register its research facility with the Secretary of Agriculture in accordance with 7 U.S.C. 2316 and 9 CFR subpart C, and §2.30, and furnish evidence of such registration to the Contracting Officer before beginning work under this contract.

(b) The Contractor shall acquire animals only from dealers licensed by the Secretary of Agriculture under 7 U.S.C. 2133 and 9 CFR subpart A, §§2.1 through 2.11, or from sources that are exempt from licensing under those sections.

(c) The Contractor agrees that the care and use of animals will conform with the pertinent laws of the United States and regulations of the Department of Agriculture (see 7 U.S.C. 2131 *et seq.* and 9 CFR subchapter A, parts 1 through 4).

(d) The Contracting Officer may immediately suspend, in whole or in part, work and further payments under this contract for failure to comply with the requirements of paragraphs (a) through (c) of this clause.

(1) The suspension will stay in effect until the Contractor complies with the requirements.

(2) Failure to complete corrective action within the time specified by the Contracting Officer may result in termination of this contract and removal of the Contractor's name from the list of contractors with approved Public Health Service Welfare Assurances.

(e) The Contractor may request registration of its facility and a current listing of licensed dealers from the Regional Office of the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture (USDA), for the region in which its research facility is located. The location of the appropriate APHIS regional office, as well as information concerning this program may be obtained by contacting the Senior Staff Officer, Animal Care Staff, USDA/APHIS, Federal Center Building, Hyattsville, MD 20782.

(f) The Contractor shall include this clause, including this paragraph (f), in all subcontracts involving research of live vertebrate animals.

(End of clause)

252.235–7003 Frequency authorization.

As prescribed in 235.071(b), use the following clause:

FREQUENCY AUTHORIZATION (DEC. 1991)

(a) The Contractor shall obtain authorization for radio frequencies required in support of this contract.

(b) For any experimental, developmental, or operational equipment for which the appropriate frequency allocation has not been made, the Contractor shall provide the technical operating characteristics of the proposed electromagnetic radiating device to the Contracting Officer during the initial planning, experimental, or developmental phase of contract performance.

(c) The Contracting Officer shall furnish the procedures for obtaining radio frequency authorization.

(d) The Contractor shall include this clause, including this paragraph (d), in all subcontracts requiring the development, production, construction, testing, or operation of a device for which a radio frequency authorization is required.

(End of clause)

ALTERNATE I (DEC. 1991)

Substitute the following paragraph (c) for paragraph (c) of the basic clause if agency procedures authorize use of

DD Form 1494, Application for Frequency Authorization:

(c) The Contractor shall use DD Form 1494, Application for Frequency Authorization, to obtain radio frequency authorization.

252.235–7004 Option to extend the term of the contract.

As prescribed in 235.015–71(i)(2), use the following clause:

OPTION TO EXTEND THE TERM OF THE CONTRACT (DEC. 1991)

If the Contractor's proposal covers an additional period(s) which could be treated as an optional period(s), the Contracting Officer may—

(a) Add the additional period(s) to the contract as an option(s); and

(b) Exercise such option(s) by written notice of exercise at any time during the performance period or any extensions thereof.

(End of clause)

252.235–7005 Contractor-acquired property.

As prescribed in 235.015–71(i)(2), use the following clause:

CONTRACTOR-ACQUIRED PROPERTY (DEC. 1991)

(a) *Definition. Property,* as used in this clause, means all nonexpendable tangible personal property (except material)—

(1) Described in FAR 45.101, including automatic data processing equipment as defined in FAR 31.001, and facilities as defined in FAR 45.301;

(2) Which is acquired with funds provided under this contract for the conduct of research;

(3) Which the Contractor has specifically identified in its proposal; and

(4) Which the Contracting Officer has authorized the Contractor to acquire.

(b) The Contracting Officer may accept the identification and description in the Contractor's proposal of property to be Contractor-acquired property as advance notification required by subparagraphs (a) and (b) of the clause of this contract entitled ''Subcontracts Under Cost-Reimbursement and Letter Contracts.''

(c) Except for those items specifically identified in the contract as required by Block 27a of the DD Form 2222 (Research Contract (SFRC)/Modification, Short Form), award of this contract constitutes the Contracting Officer's written consent to acquire property in the Contractor's proposal.

(d) The Contracting Officer will approve or disapprove subcontracts to acquire the items listed in Block 27a of the DD Form 2222 after the award of any contract resulting from this solicitation.

(End of clause)

252.235–7006 Title to contractor-acquired property.

As prescribed in 235.015–71(i)(2), use the following clause:

TITLE TO CONTRACTOR-ACQUIRED PROPERTY (DEC. 1991)

(a) *Definition. Property,* as used in this clause, has the meaning given in the Contractor-Acquired Property clause of this contract.

(b) Title shall vest in the Contractor without further obligation when the property—

(1) Has an acquisition cost of $1,000 or more;

(2) Was specifically identified in the Contractor's proposal; and

(3) Is property other than that property for which a determination of title is deferred. Property for which the determination of title is deferred shall be identified in Block 27b of the DD Form 2222, Research Contract (SFRC)/Modification, Short Form.

(c) Title in all property which—

(1) Has an acquisition cost of $1,000 or more; and

(2) Was not specifically identified in the Contractor's proposal; or

(3) Is property for which a determination of title is deferred, may vest—

(i) In the Government;

(ii) In the Contractor; or

(iii) In the Contractor, subject to the right of the Government to direct transfer of the title back to the Government or third parties. The Government may exercise this right at any time up to and including the twelfth month after completion or termination of the contract. The Government at any time may remove an item of property from this category, give up the right to direct transfer of the title back to the Government or third parties, and transfer title to the Contractor.

(d) Transfer of title back to the Government or third parties shall not be the basis for any claim by the Contractor. The Government Property (Cost-Reimbursement, Time and Material, or Labor Hour Contracts) clause and its Alternate I of this contract apply to any changes in property.

(e) Property acquired with funds made available under this contract shall be considered Government property subject to the Government Property clause until title to such property vests in the Contractor without right of the Government to direct transfer of the title back to the Government or third parties.

(f) Within 45 days following the end of the calendar year or the Contractor's fiscal year, the Contractor shall furnish the Contracting

Officer a list of all property with an acquisition cost of $1,000 or more which the Contractor acquired under this contract during that year and to which title has not vested in the Contractor.

(End of clause)

252.235–7007 Advance payments.

As prescribed in 235.015–71(i)(2), use the following clause:

ADVANCE PAYMENTS (DEC. 1991)

The advance payment pool agreement between the Contractor and one or more military departments which is in effect as of the date of, and applies to, this contract shall govern advance payments made under this contract. If such an agreement is not in effect as of the date of this contract, the Allowable Cost and Payment clause of this contract shall govern payments to the Contractor.

(End of clause)

252.235–7008 Inspection and acceptance.

As prescribed in 235.015–71(i)(2), use the following clause:

INSPECTION AND ACCEPTANCE (DEC. 1991)

The Scientific Program Officer designated in Block 11 on the DD Form 2222 (Research Contract (SFRC)/Modification, Short Form) of this contract shall conduct inspection and acceptance of the final delivery. The Scientific Program Officer shall have at least 30 days after contractual delivery for acceptance.

(End of clause)

252.235–7009 Restriction on printing.

As prescribed in 235.015–71(i)(2), use the following clause:

RESTRICTION ON PRINTING (DEC. 1991)

The Contractor is authorized to reproduce reports, data, or other written materials, if required, provided the material produced does not exceed 5,000 production units of any page, and items consisting of multiple pages do not exceed 25,000 production units in the aggregate. The Contractor shall obtain the express prior written authorization of the Contracting Officer to reproduce material in excess of these quantities.

(End of clause)

252.235–7010 Acknowledgment of support and disclaimer.

As prescribed in 235.071(c), use the following clause:

ACKNOWLEDGMENT OF SUPPORT AND DISCLAIMER (MAY 1995)

(a) The Contractor shall include an acknowledgment of the Government's support in the publication of any material based on or developed under this contract, stated in the following terms: This material is based upon work supported by the (name of contracting agency(ies)) under Contract No. (Contracting agency(ies) contract number(s)).

(b) All material, except scientific articles or papers published in scientific journals, must, in addition to any notices or disclaimers by the Contractor, also contain the following disclaimer: Any opinions, findings and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the (name of contracting agency(ies)).

(End of clause)

[60 FR 29503, June 5, 1995]

252.235–7011 Final scientific or technical report.

As prescribed in 235.071(d), use the following clause:

FINAL SCIENTIFIC OR TECHNICAL REPORT (MAY 1995)

The Contractor shall submit two copies of the approved scientific or technical report delivered under this contract to the Defense Technical Information Center (DTIC), Attn: DTIC–OC, Cameron Station, Alexandria, VA 22304–6145. The Contractor shall include a completed Standard Form 298, Report Documentation Page, with each copy of the report. For submission of reports in other than paper copy, contact the Defense Technical Information Center, Attn: DTIC–OC, Cameron Station, Alexandria, VA 22304–6145.

(End of clause)

[60 FR 29503, June 5, 1995]

252.236–7000 Modification proposals—price breakdown.

As prescribed in 236.570(a), use the following clause:

MODIFICATION PROPOSALS—PRICE BREAKDOWN (DEC. 1991)

(a) The Contractor shall furnish a price breakdown, itemized as required and within the time specified by the Contracting Officer, with any proposal for a contract modification.

(b) The price breakdown—

(1) Must include sufficient detail to permit an analysis of profit, and of all costs for—

(i) Material;

(ii) Labor;

(iii) Equipment;

(iv) Subcontracts; and

(v) Overhead; and

(2) Must cover all work involved in the modification, whether the work was deleted, added, or changed.

(c) The Contractor shall provide similar price breakdowns to support any amounts claimed for subcontracts.

(d) The Contractor's proposal shall include a justification for any time extension proposed.

(End of clause)

252.236–7001 Contract drawings, maps, and specifications.

As prescribed in 236.570(a), use the following clause:

CONTRACT DRAWINGS, MAPS, AND SPECIFICATIONS (DEC. 1991)

(a) The Government—

(1) Will provide the Contractor, without charge, _____ sets (five unless otherwise specified) of large-scale contract drawings and specifications except publications incorporated into the technical provisions by reference;

(2) Will furnish additional sets on request, for the cost of reproduction; and

(3) May, at its option, furnish the Contractor one set of reproducibles, or half-size drawings, in lieu of the drawings in paragraph (a)(1) of this clause.

(b) The Contractor shall—

(1) Check all drawings furnished immediately upon receipt;

(2) Compare all drawings and verify the figures before laying out the work;

(3) Promptly notify the Contracting Officer of any discrepancies; and

(4) Be responsible for any errors which might have been avoided by complying with this paragraph (b).

(c) Large scale drawings shall, in general, govern small scale drawings. Figures marked on drawings shall, in general, be followed in preference to scale measurements.

(d) Omissions from the drawings or specifications or the misdescription of details of work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall not relieve the contractor from performing such omitted or misdescribed details of the work, but shall be performed as if fully and correctly set forth and described in the drawings and specifications.

(e) The work shall conform to the specifications and the contract drawings identified on the following index of drawings:

Title File and Drawing No.

(End of clause)

252.236–7002 Obstruction of navigable waterways.

As prescribed in 236.570(b)(1), use the following clause:

OBSTRUCTION OF NAVIGABLE WATERWAYS (DEC. 1991)

(a) The Contractor shall—

(1) Promptly recover and remove any material, plant, machinery, or appliance which the contractor loses, dumps, throws overboard, sinks, or misplaces, and which, in the opinion of the Contracting Officer, may be dangerous to or obstruct navigation;

(2) Give immediate notice, with description and locations of any such obstructions, to the Contracting Officer; and

(3) When required by the Contracting Officer, mark or buoy such obstructions until the same are removed.

(b) The Contracting Officer may—

(1) Remove the obstructions by contract or otherwise should the Contractor refuse, neglect, or delay compliance with paragraph (a) of this clause; and

(2) Deduct the cost of removal from any monies due or to become due to the Contractor; or

(3) Recover the cost of removal under the Contractor's bond.

(c) The Contractor's liability for the removal of a vessel wrecked or sunk without fault or negligence is limited to that provided in sections 15, 19, and 20 of the River and Harbor Act of March 3, 1899 (33 U.S.C. 410 *et seq.*).

(End of clause)

252.236–7003 Payment for mobilization and preparatory work.

As prescribed in 236.570(b)(2), use the following clause:

PAYMENT FOR MOBILIZATION AND PREPARATORY WORK (JAN 1997)

(a) The Government will make payment to the Contractor under the procedures in this clause for mobilization and preparatory work under item no. _____.

(b) Payments will be made for actual payments by the Contractor on work preparatory to commencing actual work on the construction items for which payment is provided under the terms of this contract, as follows—

(1) For construction plant and equipment exceeding $25,000 in value per unit (as appraised by the Contracting Officer at the work site) acquired for the execution of the work;

(2) Transportation of all plant and equipment to the site;

(3) Material purchased for the prosecution of the contract, but not to be incorporated in the work;

(4) Construction of access roads or railroads, camps, trailer courts, mess halls, dormitories or living quarters, field headquarters facilities, and construction yards;

(5) Personal services; and

(6) Hire of plant.

(c) Requests for payment must include—

(1) An account of the Contractor's actual expenditures;

(2) Supporting documentation, including receipted bills or copies of payrolls and freight bills; and

(3) The Contractor's documentation—

(i) Showing that it has acquired the construction plant, equipment, and material free from all encumbrances;

(ii) Agreeing that the construction plant, equipment, and material will not be removed from the site without the written permission of the Contracting Officer; and

(iii) Agreeing that structures and facilities prepared or erected for the prosecution of the contract work will be maintained and not dismantled prior to the completion and acceptance of the entire work, without the written permission of the Contracting Officer.

(d) Upon receiving a request for payment, the Government will make payment, less any prescribed retained percentage, if—

(1) The Contracting Officer finds the—

(i) Construction plant, material, equipment, and the mobilization and preparatory work performed are suitable and necessary to the efficient prosecution of the contract; and

(ii) Preparatory work has been done with proper economy and efficiency.

(2) Payments for construction plant, equipment, material, and structures and facilities prepared or erected for prosecution of the contract work do not exceed—

(i) The Contractor's cost for the work performed less the estimated value upon completion of the contract; and

(ii) 100 percent of the cost to the contractor of any items having no appreciable salvage value; and

(iii) 75 percent of the cost to the contractor of items which do have an appreciable salvage value.

(e) (1) Payments will continue to be made for item no. _____, and all payments will be deducted from the contract price for this item, until the total deductions reduce this item to zero, after which no further payments will be made under this item.

(2) If the total of payments so made does not reduce this item to zero, the balance will be paid to the Contractor in the final payment under the contract.

(3) The retained percentage will be paid in accordance with the Payments to Contractor clause of this contract.

(f) The Contracting Officer shall determine the value and suitability of the construction plant, equipment, materials, structures and facilities. The Contracting Officer's determinations are not subject to appeal.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 62 FR 2614, Jan. 17, 1997]

252.236–7004 Payment for mobilization and demobilization.

As prescribed in 236.570(b)(2), use the following clause:

PAYMENT FOR MOBILIZATION AND DEMOBILIZATION (DEC. 1991)

(a) The Government will pay all costs for the mobilization and demobilization of all of the Contractor's plant and equipment at the contract lump sum price for this item.

(1) _____ percent of the lump sum price upon completion of the contractor's mobilization at the work site.

(2) The remaining _____ percent upon completion of demobilization.

(b) The Contracting Officer may require the Contractor to furnish cost data to justify this portion of the bid if the Contracting Officer believes that the percentages in paragraphs (a) (1) and (2) of this clause do not bear a reasonable relation to the cost of the work in this contract.

(1) Failure to justify such price to the satisfaction of the Contracting Officer will result in payment, as determined by the Contracting Officer, of—

(i) Actual mobilization costs at completion of mobilization;

(ii) Actual demobilization costs at completion of demobilization; and

(iii) The remainder of this item in the final payment under this contract.

(2) The Contracting Officer's determination of the actual costs in paragraph (b)(1) of this clause is not subject to appeal.

(End of clause)

252.236–7005 Airfield safety precautions.

As prescribed in 236.570(b)(3), use the following clause. At some airfields, the width of the primary surface is 1,500 feet (750 feet on each side of the runway centerline). In such instances, substitute the proper width in the clause.

AIRFIELD SAFETY PRECAUTIONS (DEC. 1991)

(a) *Definitions.* As used in this clause—

(1) *Landing areas* means—

(i) The primary surfaces, comprising the surface of the runway, runway shoulders, and lateral safety zones. The length of each primary surface is the same as the runway length. The width of each primary surface is 2,000 feet (1,000 feet on each side of the runway centerline);

(ii) The *clear zone* beyond the ends of each runway, i.e., the extension of the primary surface for a distance of 1,000 feet beyond each end of each runway;

(iii) All taxiways, plus the lateral clearance zones along each side for the length of the taxiways (the outer edge of each lateral clearance zone is laterally 250 feet from the far or opposite edge of the taxiway, e.g., a 75-foot-wide taxiway would have a combined width of taxiway and lateral clearance zones of 425 feet); and

(iv) All aircraft parking aprons, plus the area 125 feet in width extending beyond each edge all around the aprons.

(2) *Safety precaution areas* means those portions of approach-departure clearance zones and transitional zones where placement of objects incident to contract performance might result in vertical projections at or above the approach-departure clearance, or the transitional surface.

(i) The *approach-departure clearance surface* is an extension of the primary surface and the clear zone at each end of each runway, for a distance of 50,000 feet, first along an inclined (glide angle) and then along a horizontal plane, both flaring symmetrically about the runway centerline extended.

(A) The inclined plane (glide angle) begins in the clear zone 200 feet past the end of the runway (and primary surface) at the same elevation as the end of the runway. It continues upward at a slope of 50:1 (1 foot vertically for each 50 feet horizontally) to an elevation of 500 feet above the established airfield elevation. At that point the plane becomes horizontal, continuing at that same uniform elevation to a point 50,000 feet longitudinally from the beginning of the inclined plane (glide angle) and ending there.

(B) The width of the surface at the beginning of the inclined plane (glide angle) is the same as the width of the clear zone. It then flares uniformly, reaching the maximum width of 16,000 feet at the end.

(ii) The *approach-departure clearance zone* is the ground area under the approach-departure clearance surface.

(iii) The *transitional surface* is a sideways extension of all primary surfaces, clear zones, and approach-departure clearance surfaces along inclined planes.

(A) The inclined plane in each case begins at the edge of the surface.

(B) The slope of the incline plane is 7:1 (1 foot vertically for each 7 feet horizontally). It continues to the point of intersection with the—

(*1*) Inner horizontal surface (which is the horizontal plane 150 feet above the established airfield elevation); or

(*2*) Outer horizontal surface (which is the horizontal plane 500 feet above the established airfield elevation), whichever is applicable.

(iv) The ''transitional zone'' is the ground area under the transitional surface. (It adjoins the primary surface, clear zone, and approach-departure clearance zone.)

(b) *General.* (1) The Contractor shall comply with the requirements of this clause while—

(i) Operating all ground equipment (mobile or stationary);

(ii) Placing all materials; and

(iii) Performing all work, upon and around all airfields.

(2) The requirements of this clause are in addition to any other safety requirements of this contract.

(c) The Contractor shall—

(1) Report to the Contracting Officer before initiating any work;

(2) Notify the Contracting Officer of proposed changes to locations and operations;

(3) Not permit either its equipment or personnel to use any runway for purposes other than aircraft operation without permission of the Contracting Officer, unless the runway is—

(i) Closed by order of the Contracting Officer; and

(ii) Marked as provided in paragraph (d)(2) of this clause;

(4) Keep all paved surfaces, such as runways, taxiways, and hardstands, clean at all times and, specifically, free from small stones which might damage aircraft propellers or jet aircraft;

(5) Operate mobile equipment according to the safety provisions of this clause, while actually performing work on the airfield. At all other times, the Contractor shall remove all mobile equipment to locations—

(i) Approved by the Contracting Officer;

(ii) At a distance of at least 750 feet from the runway centerline, plus any additional distance; and

(iii) Necessary to ensure compliance with the other provisions of this clause; and

(6) Not open a trench unless material is on hand and ready for placing in the trench. As soon as practicable after material has been placed and work approved, the Contractor shall backfill and compact trenches as required by the contract. Meanwhile, all hazardous conditions shall be marked and lighted in accordance with the other provisions of this clause.

(d) *Landing areas.* The Contractor shall—

(1) Place nothing upon the landing areas without the authorization of the Contracting Officer;

(2) Outline those landing areas hazardous to aircraft, using (unless otherwise authorized by the Contracting Officer) red flags by day, and electric, battery-operated low-intensity red flasher lights by night;

(3) Obtain, at an airfield where flying is controlled, additional permission from the control tower operator every time before entering any landing area, unless the landing area is marked as hazardous in accordance with paragraph (d)(2) of this clause;

(4) Identify all vehicles it operates in landing areas by means of a flag on a staff attached to, and flying above, the vehicle. The flag shall be three feet square, and consist of a checkered pattern of international orange and white squares of 1 foot on each side (except that the flag may vary up to ten percent from each of these dimensions);

(5) Mark all other equipment and materials in the landing areas, using the same marking devices as in paragraph (d)(2) of this clause; and

(6) Perform work so as to leave that portion of the landing area which is available to aircraft free from hazards, holes, piles of material, and projecting shoulders that might damage an airplane tire.

(e) *Safety precaution areas.* The Contractor shall—

(1) Place nothing upon the safety precaution areas without authorization of the Contracting Officer;

(2) Mark all equipment and materials in safety precaution areas, using (unless otherwise authorized by the Contracting Officer) red flags by day, and electric, battery-operated, low-intensity red flasher lights by night; and

(3) Provide all objects placed in safety precaution areas with a red light or red lantern at night, if the objects project above the approach-departure clearance surface or above the transitional surface.

(End of clause)

252.236–7006 Cost limitation.

As prescribed in 236.570(b)(4), use the following provision:

COST LIMITATION (JAN 1997)

(a) Certain items in this solicitation are subject to statutory cost limitations. The limitations are stated in the Schedule.

(b) An offer which does not state separate prices for the items identified in the Schedule as subject to a cost limitation may be considered nonresponsive.

(c) Prices stated in offers for items subject to cost limitations shall include an appropriate apportionment of all costs, direct and indirect, overhead, and profit.

(d) Offers may be rejected which—

(1) Are materially unbalanced for the purpose of bringing items within cost limitations; or

(2) Exceed the cost limitations, unless the limitations have been waived by the Government prior to award.

(End of provision)

[56 FR 36479, July 31, 1991, as amended at 62 FR 2615, Jan. 17, 1997]

252.236–7007 Additive or deductive items.

As prescribed in 236.570(b)(5), use the following provision:

ADDITIVE OR DEDUCTIVE ITEMS (DEC. 1991)

(a) The low offeror and the items to be awarded shall be determined as follows—

(1) Prior to the opening of bids, the Government will determine the amount of funds available for the project.

(2) The low offeror shall be the Offeror that—

(i) Is otherwise eligible for award; and

(ii) Offers the lowest aggregate amount for the first or base bid item, plus or minus (in the order stated in the list of priorities in the bid schedule) those additive or deductive items that provide the most features within the funds determined available.

(3) The Contracting Officer shall evaluate all bids on the basis of the same additive or deductive items.

(i) If adding another item from the bid schedule list of priorities would make the award exceed the available funds for all offerors, the Contracting Officer will skip that item and go to the next item from the bid schedule of priorities; and

(ii) Add that next item if an award may be made that includes that item and is within the available funds.

(b) The Contracting Officer will use the list of priorities in the bid schedule only to determine the low offeror. After determining the low offeror, an award may be made on any combination of items if—

(1) It is in the best interest of the Government;

(2) Funds are available at the time of award; and

(3) The low offeror's price for the combination to be awarded is less than the price offered by any other responsive, responsible offeror.

(c) *Example.* The amount available is $100,000. Offeror A's base bid and four additives (in the order stated in the list of priorities in the bid Schedule) are $85,000, $10,000, $8,000, $6,000, and $4,000. Offeror B's base bid and four additives are $80,000, $16,000, $9,000, $7,000, and $4,000. Offeror A is the low offeror. The aggregate amount of offeror A's bid for purposes of award would be $99,000, which includes a base bid plus the first and fourth additives. The second and third additives were skipped because each of them would cause the aggregate bid to exceed $100,000.

(End of provision)

252.236–7008 Contract prices—bidding schedules.

As prescribed in 236.570(b)(6), use the following provision:

CONTRACT PRICES—BIDDING SCHEDULES (DEC. 1991)

(a) The Government's payment for the items listed in the Bidding Schedule shall constitute full compensation to the Contractor for—

(1) Furnishing all plant, labor, equipment, appliances, and materials; and

(2) Performing all operations required to complete the work in conformity with the drawings and specifications.

(b) The Contractor shall include in the prices for the items listed in the Bidding Schedule all costs for work in the specifications, whether or not specifically listed in the Bidding Schedule.

(End of provision)

252.236–7009 Option for supervision and inspection services.

As prescribed in 236.609–70, use the following clause:

OPTION FOR SUPERVISION AND INSPECTION SERVICES (DEC. 1991)

(a) The Government may—

(1) At its option, direct the Contractor to perform any part or all of the supervision and inspection services for the construction contract as provided under appendix A of this contract; and

(2) Exercise its option, by written order, at any time prior to six months after satisfactory completion and acceptance of the work under this contract.

(b) Upon receipt of the Contracting Officer's written order, the Contractor shall proceed with the supervision and inspection services.

(End of clause)

252.236–7010 Overseas Military Construction—Preference for United States Firms.

As prescribed in 236.570(c), use the following provision:

OVERSEAS MILITARY CONSTRUCTION—PREFERENCE FOR UNITED STATES FIRMS (JAN 1997)

(a) *Definition.*

''United States firm,'' as used in this provision, means a firm incorporated in the United States that complies with the following:

(1) The corporate headquarters are in the United States;

(2) The firm has filed corporate and employment tax returns in the United States for a minimum of 2 years (if required), has filed State and Federal income tax returns (if required) for 2 years, and has paid any taxes due as a result of these filings; and

(3) The firm employs United States citizens in key management positions.

(b) *Evaluation.* Offers from firms that do not qualify as United States firms will be evaluated by adding 20 percent to the offer.

(c) *Status.* The offeror _____ is, _____ is not a United States firm.

(End of provision)

[62 FR 2857, Jan. 17, 1997]

252.236–7011 Overseas Architect-Engineer Services—Restriction to United States Firms.

As prescribed in 236.609–70(b), use the following provision:

OVERSEAS ARCHITECT-ENGINEER SERVICES—RESTRICTION TO UNITED STATES FIRMS (JAN 1997)

(a) *Definition.*

United States firm, as used in this provision, means a firm incorporated in the United States that complies with the following:

(1) The corporate headquarters are in the United States;

(2) The firm has filed corporate and employment tax returns in the United States for a minimum of 12 years (if required), has filed State and Federal income tax returns (if required) for 2 years, and has paid any taxes due as a result of these filings; and

(3) The firm employs United States citizens in key management positions.

(b) *Restriction.* Military construction appropriations acts restrict award of a contract, resulting from this solicitation, to a

United States firm or a joint venture of United States and host nation firms.

(c) *Status.* The offeror confirms, by submission of its offer, that it is a United States firm or a joint venture of United States and host nation firms.

(End of provision)

[62 FR 2858, Jan. 17, 1997]

252.237–7000 Notice of special standards of responsibility.

As prescribed in 237.203–70(d)(1), use the following provision:

NOTICE OF SPECIAL STANDARDS OF RESPONSIBILITY (DEC. 1991)

(a) To be determined responsible, the Offeror must meet the general standards of responsibility set forth at FAR 9.104–1 and the following criteria, as described in Chapter 3, General Standards, of ''Government Auditing Standards.''

(1) Qualifications;

(2) Independence; and

(3) Quality Control.

(b) ''Government Auditing Standards'' is issued by the Comptroller General of the United States and is available for sale from the: Superintendent of Documents, U.S. Government Printing Office. Washington, DC 20401, Stock number 020–000–00243–3.

(c) The apparently successful Offeror, before award, shall give the Contracting Officer evidence that it is licensed by the cognizant licensing authority in the state or other political jurisdiction where the Offeror operates its professional practice.

(End of provision)

252.237–7001 Compliance with audit standards.

As prescribed in 237.203–70(d)(2), use the following clause:

COMPLIANCE WITH AUDIT STANDARDS (DEC. 1991)

The Contractor, in performance of all audit services under this contract, shall comply with—

(a) Government Auditing Standards set forth in ''Government Auditing Standards'' issued by the Comptroller General of the United States.

(b) Office of Management and Budget Circular No. A–73, Audit of Federal Operations and Programs.

(End of clause)

252.237–7002 Award to single offeror.

As prescribed in 237.7004(a), use the following provision:

AWARD TO SINGLE OFFEROR (DEC. 1991)

(a) Award shall be made to a single offeror.

(b) Offerors shall include unit prices for each item. Failure to include unit prices for each item will be cause for rejection of the entire offer.

(c) The Government will evaluate offers on the basis of the estimated quantities shown.

(d) Award will be made to that responsive, responsible offeror whose total aggregate offer is the lowest price to the Government.

(End of provision)

ALTERNATE I (DEC. 1991)

As prescribed in 237.7004(a), substitute the following paragraph (d) for paragraph (d) of the basic provision:

(d) Award will be made to that responsive, responsible offeror whose total aggregate offer is in the best interest of the Government.

252.237–7003 Requirements.

As prescribed in 237.7004(b), use the following clause:

REQUIREMENTS (DEC. 1991)

(a) Except as provided in paragraphs (c) and (d) of this clause, the Government will order from the Contractor all of its requirements in the area of performance for the supplies and services listed in the schedule of this contract.

(b) Each order will be issued as a delivery order and will list—

(1) The supplies or services being ordered;

(2) The quantities to be furnished;

(3) Delivery or performance dates;

(4) Place of delivery or performance;

(5) Packing and shipping instructions;

(6) The address to send invoices; and

(7) The funds from which payment will be made.

(c) The Government may elect not to order supplies and services under this contract in instances where the body is removed from the area for medical, scientific, or other reason.

(d) In an epidemic or other emergency, the contracting activity may obtain services beyond the capacity of the Contractor's facilities from other sources.

(e) Contracting Officers of the following activities may order services and supplies under this contract—

(End of clause)

252.237–7004 Area of performance.

As prescribed in 237.7004(b), use the following clause:

AREA OF PERFORMANCE (DEC. 1991)

(a) The area of performance is as specified in the contract.

(b) The Contractor shall take possession of the remains at the place where they are located, transport them to the Contractor's place of preparation, and later transport them to a place designated by the Contracting Officer.

(c) The Contractor will not be reimbursed for transportation when both the place where the remains were located and the delivery point are within the area of performance.

(d) If remains are located outside the area of performance, the Contracting Officer may place an order with the Contractor under this contract or may obtain the services elsewhere. If the Contracting Officer requires the Contractor to transport the remains into the area of performance, the Contractor shall be paid the amount per mile in the schedule for the number of miles required to transport the remains by a reasonable route from the point where located to the boundary of the area of performance.

(e) The Contracting Officer may require the Contractor to deliver remains to any point within 100 miles of the area of performance. In this case, the Contractor shall be paid the amount per mile in the schedule for the number of miles required to transport the remains by a reasonable route from the boundary of the area of performance to the delivery point.

(End of clause)

252.237–7005 Performance and delivery.

As prescribed in 237.7004(b), use the following clause:

PERFORMANCE AND DELIVERY (DEC. 1991)

(a) The Contractor shall furnish the material ordered and perform the services specified as promptly as possible but not later than 36 hours after receiving notification to remove the remains, excluding the time necessary for the Government to inspect and check results of preparation.

(b) The Government may, at no additional charge, require the Contractor to hold the remains for an additional period not to exceed 72 hours from the time the remains are casketed and final inspection completed.

(End of clause)

252.237–7006 Subcontracting.

As prescribed in 237.7004(b), use the following clause:

SUBCONTRACTING (DEC. 1991)

The Contractor shall not subcontract any work under this contract without the Contracting Officer's written approval. This clause does not apply to contracts of employment between the Contractor and its personnel.

(End of clause)

252.237–7007 Termination for default.

As prescribed in 237.7004(b), use the following clause:

TERMINATION FOR DEFAULT (DEC. 1991)

(a) This clause supplements and is in addition to the Default clause of this contract.

(b) The Contracting Officer may terminate this contract for default by written notice without the ten day notice required by paragraph (a)(2) of the Default clause if—

(1) The Contractor, through circumstances reasonably within its control or that of its employees, performs any act under or in connection with this contract, or fails in the performance of any service under this contract and the act or failures may reasonably be considered to reflect discredit upon the Department of Defense in fulfilling its responsibility for proper care of remains;

(2) The Contractor, or its employees, solicits relatives or friends of the deceased to purchase supplies or services not under this contract. (The Contractor may furnish supplies or arrange for services not under this contract, only if representatives of the deceased voluntarily request, select, and pay for them.);

(3) The services or any part of the services are performed by anyone other than the Contractor or the Contractor's employees without the written authorization of the Contracting Officer;

(4) The Contractor refuses to perform the services required for any particular remains; or

(5) The Contractor mentions or otherwise uses this contract in its advertising in any way.

(End of clause)

252.237–7008 Group interment.

As prescribed in 237.7004(b), use the following clause:

GROUP INTERMENT (DEC. 1991)

The Government will pay the Contractor for supplies and services provided for remains interred as a group on the basis of the number of caskets furnished, rather than on the basis of the number of persons in the group.

(End of clause)

252.237–7009 Permits.

As prescribed in 237.7004(b), use the following clause:

PERMITS (DEC. 1991)

The Contractor shall meet all State and local licensing requirements and obtain and furnish all necessary health department and shipping permits at no additional cost to the Government. The Contractor shall ensure that all necessary health department permits are in order for disposition of the remains.

(End of clause)

252.237–7010 Facility requirements.

As prescribed in 237.7004(b), use the following clause:

FACILITY REQUIREMENTS (DEC. 1991)

(a) The Contractor's building shall have complete facilities for maintaining the highest standards of solemnity, reverence, assistance to the family, and prescribed ceremonial services.

(b) The Contractor's preparation room shall be clean, sanitary, and adequately equipped.

(c) The Contractor shall have, or be able to get, catafalques, church trucks, and equipment for Protestant, Catholic, and Jewish services.

(d) The Contractor's funeral home, furnishings, grounds, and surrounding area shall present a clean and well-kept appearance.

(End of clause)

252.237–7011 Preparation history.

As prescribed in 237.7004(b), use the following clause:

PREPARATION HISTORY (DEC. 1991)

For each body prepared, or for each casket handled in a group interment, the Contractor shall state briefly the results of the embalming process on a certificate furnished by the Contracting Officer.

(End of clause)

252.237–7012 Instruction to offerors (count-of-articles).

As prescribed in 237.7102(a), use the following provision:

INSTRUCTION TO OFFERORS (COUNT-OF-ARTICLES) (DEC. 1991)

(a) The Offeror shall include unit prices for each item in a lot. Unit prices shall include all costs to the Government of providing the services, including pickup and delivery charges.

(b) Failure to offer on any item in a lot shall be cause for rejection of the offer on that lot. The Contracting Officer will evaluate offers based on the estimated quantities in the solicitation.

(c) Award generally will be made to a single offeror for all lots. However, the Contracting Officer may award by individual lot when it is more advantageous to the Government.

(d) Prospective offerors may inspect the types of articles to be serviced. Contact the Contracting Officer to make inspection arrangements.

(End of provision)

252.237–7013 Instruction to offerors (bulk weight).

As prescribed in 237.7102(b), use the following provision:

INSTRUCTION TO OFFERORS (BULK WEIGHT) (DEC. 1991)

(a) Offers shall be submitted on a unit price per pound of serviced laundry. Unit prices shall include all costs to the Government of providing the service, including pickup and delivery charges.

(b) The Contracting Officer will evaluate bids based on the estimated pounds of serviced laundry stated in the solicitation.

(c) Award generally will be made to a single offeror for all lots. However, the Contracting Officer may award by individual lot when it is more advantageous to the Government.

(d) Prospective offerors may inspect the types of articles to be serviced. Contact the Contracting Officer to make inspection arrangements.

(End of provision)

252.237–7014 Loss or damage (count-of-articles).

As prescribed in 237.7102(c), use the following clause:

LOSS OR DAMAGE (COUNT-OF-ARTICLES) (DEC. 1991)

(a) The count-of-articles will be—

(1) The count of the Contracting Officer; or

(2) The count agreed upon as a result of a joint count by the Contractor and the Contracting Officer at the time of delivery to the Contractor.

(b) The Contractor shall—

(1) Be liable for return of the number and kind of articles furnished for service under this contract; and

(2) Shall indemnify the Government for any loss or damage to such articles.

(c) The Contractor shall pay to the Government the value of any lost or damaged property using Federal supply schedule price lists. If the property is not on these price lists, the Contracting Officer shall determine a fair and reasonable price.

(d) The Contracting Officer will allow credit for any depreciation in the value of the property at the time of loss or damage. The Contracting Officer and the Contractor shall mutually determine the amount of the allowable credit.

(e) Failure to agree upon the value of the property or on the amount of credit due will be treated as a dispute under the Disputes clause of this contract.

(f) In case of damage to any property that the Contracting Officer and the Contractor agree can be satisfactorily repaired, the Contractor may repair the property at its expense in a manner satisfactory to the Contracting Officer, rather than make payment under paragraph (c) of this clause.

(End of clause)

252.237–7015 Loss or damage (weight of articles).

As prescribed in 237.7102(d), use the following clause:

LOSS OR DAMAGE (WEIGHT OF ARTICLES) (DEC. 1991)

(a) The Contractor shall—

(1) Be liable for return of the articles furnished for service under this contract; and

(2) Indemnify the Government for any articles delivered to the Contractor for servicing under this contract that are lost or damaged, and in the opinion of the Contracting Officer, cannot be repaired satisfactorily.

(b) The Contractor shall pay to the Government _____ per pound for lost or damaged articles. The Contractor shall pay the Government only for losses which exceed the maximum weight loss in paragraph (e) of this clause.

(c) Failure to agree on the amount of credit due will be treated as a dispute under the Disputes clause of this contract.

(d) In the case of damage to any articles that the Contracting Officer and the Contractor agree can be satisfactorily repaired, the Contractor shall repair the articles at its expense in a manner satisfactory to the Contracting Officer.

(e) The maximum weight loss allowable in servicing the laundry is _____ percent of the weight recorded on delivery tickets when the laundry is picked up. Any weight loss in excess of this amount shall be subject to the loss provisions of this clause.

(End of clause)

252.237–7016 Delivery tickets.

As prescribed in 237.7102(e), use the following clause:

DELIVERY TICKETS (DEC. 1991)

(a) The Contractor shall complete delivery tickets in the number of copies required and in the form approved by the Contracting Officer, when it receives the articles to be serviced.

(b) The Contractor shall include one copy of each delivery ticket with its invoice for payment.

(End of clause)

ALTERNATE I (DEC. 1991)

As prescribed in 237.7102(e)(1), add the following paragraphs (c), (d), and (e) to the basic clause:

(c) Before the Contractor picks up articles for service under this contract, the Contracting Officer will ensure that—

(1) Each bag contains only articles within a single bag type as specified in the schedule; and

(2) Each bag is weighed and the weight and bag type are identified on the bag.

(d) The Contractor shall, at time of pickup—

(1) Verify the weight and bag type and record them on the delivery ticket; and

(2) Provide the Contracting Officer, or representative, a copy of the delivery ticket.

(e) At the time of delivery, the Contractor shall record the weight and bag type of serviced laundry on the delivery ticket. The Contracting Officer will ensure that this weight and bag type are verified at time of delivery.

ALTERNATE II (DEC. 1991)

As prescribed in 237.7102(e)(2), add the following paragraphs (c), (d), and (e) to the basic clause—

(c) Before the Contractor picks up articles for service under this contract, the Contracting Officer will ensure that each bag is weighed and that the weight is identified on the bag.

(d) The Contractor, at time of pickup, shall verify and record the weight on the delivery

ticket and shall provide the Contracting Officer, or representative, a copy of the delivery ticket.

(e) At the time of delivery, the Contractor shall record the weight of serviced laundry on the delivery ticket. The Contracting Officer will ensure that this weight is verified at time of delivery.

252.237–7017 Individual laundry.

As prescribed in 237.7102(f), use the following clause:

INDIVIDUAL LAUNDRY (DEC. 1991)

(a) The Contractor shall provide laundry service under this contract on both a unit bundle and on a piece-rate bundle basis for individual personnel.

(b) The total number of pieces listed in the ''Estimated Quantity'' column in the schedule is the estimated amount of individual laundry for this contract. The estimate is for information only and is not a representation of the amount of individual laundry to be ordered. Individuals may elect whether or not to use the laundry services.

(c) Charges for individual laundry will be on a per unit bundle or a piece-rate basis. The Contractor shall provide individual laundry bundle delivery tickets for use by the individuals in designating whether the laundry is a unit bundle or a piece-rate bundle. An individual laundry bundle will be accompanied by a delivery ticket listing the contents of the bundle.

(d) The maximum number of pieces to be allowed per bundle is as specified in the schedule and as follows—

(1) *Bundle consisting of 26 pieces, including laundry bag.* This bundle will contain approximately _____ pieces of outer garments which shall be starched and pressed. Outer garments include, but are not limited to, shirts, trousers, jackets, dresses, and coats.

(2) *Bundle consisting of 13 pieces, including laundry bag.* This bundle will contain approximately _____ pieces of outer garments which shall be starched and pressed. Outer garments include, but are not limited to, shirts, trousers, jackets, dresses, and coats.

(End of clause)

252.237–7018 Special definitions of government property.

As prescribed in 237.7102(g), use the following clause:

SPECIAL DEFINITIONS OF GOVERNMENT PROPERTY (DEC. 1991)

Articles delivered to the Contractor to be laundered or dry-cleaned, including any articles which are actually owned by individual Government personnel, are Government-owned property, not Government-furnished property. Government-owned property does not fall under the requirements of any Government-furnished property clause of this contract.

(End of clause)

252.237–7019 Identification of uncompensated overtime.

As prescribed in 237.170–3, use the following provision:

IDENTIFICATION OF UNCOMPENSATED OVERTIME (APR. 1992)

(a) *Definitions.* As used in this provision—

(1) *Uncompensated overtime* means the hours worked in excess of an average of 40 hours per week by direct charge employees who are exempt from the Fair Labor Standards Act (FLSA), without additional compensation. Compensated personal absences, such as holidays, vacations, and sick leave, shall be included in the normal work week for purposes of computing uncompensated overtime hours.

(2) *Uncompensated overtime rate* is the rate which results from multiplying the hourly rate for a 40 hour work week by 40, and then dividing by the proposed hours per week. For example, 45 hours proposed on a 40 hour work week basis at $20.00 would be converted to an uncompensated overtime rate of $17.78 per hour. ($20 × 40) divided by 45=$17.78.

(b) For any hours proposed against which an uncompensated overtime rate is applied, the Offeror shall identify in its proposal the hours in excess of an average of 40 hours per week, at the same level of detail as compensated hours, and the uncompensated overtime rate per hour, whether at the prime or subcontract level. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct.

(c) The Offeror's accounting practices used to estimate uncompensated overtime must be consistent with its cost accounting practices used to accumulate and report uncompensated overtime hours.

(d) Proposals which include unrealistically low labor rates, or which do not otherwise demonstrate cost realism, will be considered in a risk assessment and evaluated for award in accordance with that assessment.

(e) The Offeror shall include a copy of its policy addressing uncompensated overtime with its proposal.

(End of provision)

[56 FR 67222, Dec. 30, 1991, as amended at 57 FR 14996, Apr. 23, 1992; 57 FR 42633, Sept. 15, 1992]

252.237–7020—252.237–7021 [Reserved]

252.237–7022 Services at installations being closed.

As prescribed in 237.7402, use the following clause:

SERVICES AT INSTALLATIONS BEING CLOSED (MAY 1995)

Professional employees shall be used by the local government to provide services under this contract to the extent that professionals are available in the area under the jurisdiction of such government.

(End of clause)

[59 FR 36090, July 15, 1994, as amended at 60 FR 29503, June 5, 1995]

252.239–7000 Protection against compromising emanations.

As prescribed in 239.7102–3(a), use the following clause:

PROTECTION AGAINST COMPROMISING EMANATIONS (DEC. 1991)

(a) The Contractor shall provide or use only computer equipment, as specified by the Government, that has been accredited to meet the appropriate security requirements of—

(1) The National Security Agency National TEMPEST Standards (NACSEM No. 5100 or NACSEM No. 5100A, Compromising Emanations Laboratory Test Standard, Electromagnetics (U)); or

(2) Other standard specified by this contract.

(b) Upon request of the Contracting Officer, the Contractor shall provide documentation supporting the accreditation.

(c) The Government may, as part of its inspection and acceptance, conduct additional tests to ensure that equipment or systems delivered under this contract satisfy the security standards specified. The Government may conduct additional tests—

(1) At the installation site or contractor's facility.

(2) Notwithstanding the existence of valid accreditations of equipment prior to the award of this contract.

(d) Unless otherwise provided in this contract under the Warranty of Supplies or Warranty of Systems and Equipment clauses, the Contractor shall correct or replace accepted equipment or systems found to be deficient within one year after proper installations.

(1) The correction or replacement shall be at no cost to the Government.

(2) Should a modification to the delivered equipment be made by the Contractor, the one year period applies to the modification upon its proper installation.

(3) This paragraph (d) applies regardless of f.o.b. point or the point of acceptance of the deficient equipment/systems.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 56 FR 67222, Dec. 30, 1991]

52.239–7001 [Reserved]

252.239–7002 Access.

As prescribed in 239.7411(a), use the following clause:

ACCESS (DEC. 1991)

(a) Subject to military security regulations, the Government shall permit the Contractor access at all reasonable times to Contractor furnished facilities. However, if the Government is unable to permit access, the Government at its own risk and expense shall maintain these facilities and the Contractor shall not be responsible for the service involving any of these facilities during the period of nonaccess, unless the service failure results from the Contractor's fault or negligence.

(b) During periods when the Government does not permit Contractor access, the Government will reimburse the Contractor at mutually acceptable rates for the loss of or damage to the equipment due to the fault or negligence of the Government. Failure to agree shall be a dispute concerning a question of fact within the meaning of the Disputes clause of this contract.

(End of clause)

252.239–7003 Facilities and services to be furnished—common carriers.

As prescribed in 239.7411(a), use the following clause:

FACILITIES AND SERVICES TO BE FURNISHED—COMMON CARRIERS (DEC. 1991)

(a) The Contractor shall furnish any classes of services or facilities that the Contractor offers or furnishes under published tariffs.

(b) When it is mutually agreed that the Contractor shall furnish nontariffed services, the Government shall order them under the Ordering of Facilities and Services clause of this agreement/contract. These nontariffed services may include the engineering, installation, alteration, or maintenance of facilities owned either by the Contractor or the Government, wherever located.

(c) Upon request of the Contracting Officer, the Contractor agrees to interconnect its facilities with any Government-owned or furnished telecommunications equipment, facilities, or transmission media. The Contractor shall use established technical criteria for ensuring continuity of service and traffic without damage to or degradation of commercial facilities.

(End of clause)

252.239–7004 Orders for facilities and services—common carriers.

As prescribed in 239.7411(a), use the following clause:

ORDERS FOR FACILITIES AND SERVICES—COMMON CARRIERS (DEC. 1991)

The Contractor shall acknowledge a communication service authorization or other type order for supplies and facilities by—

(a) Commencing performance; or

(b) Written acceptance by a duly authorized representative.

(End of clause)

252.239–7005 Rates, charges, and services—common carriers.

As prescribed in 239.7411(a), use the following clause:

RATES, CHARGES, AND SERVICES—COMMON CARRIERS (DEC. 1991)

(a) *Definition—Governmental regulatory body* means the Federal Communications Commission, any statewide regulatory body, or any body with less than statewide jurisdiction when operating under the state authority. Regulatory bodies whose decisions are not subject to judicial appeal and regulatory bodies which regulate a company owned by the same entity which creates the regulatory body are not ''governmental regulatory bodies.''

(b) The Contractor shall furnish the services and facilities under this agreement/contract in accordance with—

(1) All applicable tariffs, rates, charges, rules, regulations, or requirements;

(i) Lawfully established by a governmental regulatory body; and

(ii) Applicable to service and facilities furnished or offered by the Contractor to the general public or the Contractor's subscribers;

(2) Rates, terms, and conditions of service and facilities furnished or offered by the Contractor to the general public or the Contractor's subscribers; or

(3) Rates, terms, and conditions of service as may be agreed upon, subject, when appropriate, to jurisdiction of a governmental regulatory body.

(c) The Government shall not prepay for services.

(d) For nontariffed services, the Contractor shall charge the Government at the lowest rate and under the most favorable terms and conditions for similar service and facilities offered to any other customer.

(e) Recurring charges for services and facilities shall, in each case, start with the satisfactory beginning of service or provision of facilities or equipment and are payable monthly in arrears.

(f) Subject to the Cancellation or Termination of Orders—Common Carriers clause, of this agreement/contract, the Government may stop the use of any service or facilities furnished under this agreement/contract at any time. The Government shall pay the contractor all charges for services and facilities adjusted to the effective date of discontinuance.

(g) Expediting charges are costs necessary to get services earlier than normal. Examples are overtime pay or special shipment. When authorized, expediting charges shall be the additional costs incurred by the Contractor and the subcontractor. The Government shall pay expediting charges only when—

(1) They are provided for in the tariff established by a governmental regulatory body; or

(2) They are authorized in a communication service authorization or other contractual document.

(h) When services normally provided are technically unacceptable and the development, fabrication, or manufacture of special equipment is required, the Government may—

(1) Provide the equipment; or

(2) Direct the Contractor to acquire the equipment or facilities. If the Contractor acquires the equipment or facilities, the acquisition shall be competitive, if practicable.

(i) If at any time the Government defers or changes its orders for any of the services but does not cancel or terminate them, the amount paid or payable to the Contractor for the services deferred or modified shall be equitably adjusted under applicable tariffs filed by the Contractor with the regulatory commission in effect at the time of deferral or change. If no tariffs are in effect, the Government and the Contractor shall equitably adjust the rates by mutual agreement. Failure to agree on any adjustment shall be a dispute concerning a question of fact within the meaning of the Disputes clause of this contract.

(End of clause)

252.239–7006 Tariff information.

As prescribed in 239.7411(a), use the following clause:

TARIFF INFORMATION (JUL 1997)

(a) The Contractor shall provide to the Contracting Officer—

(1) Upon request, a copy of the Contractor's current existing tariffs (including changes);

(2) Before filing, any application to a Federal, State, or any other regulatory agency for new or changes to, rates, charges, services, or regulations relating to any tariff or any of the facilities or services to be furnished solely or primarily to the Government; and

(3) Upon request, a copy of all information, material, and data developed or prepared in support of or in connection with an application under paragraph (a)(2) of this clause.

(b) The Contractor shall notify the Contracting Officer of any application that anyone other than the Contractor files with a governmental regulatory body which affects or will affect the rate or conditions of services under this agreement/contract. These requirements also apply to applications pending on the effective date of this agreement/contract.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 62 FR 40473, July 29, 1997]

252.239–7007 Cancellation or termination of orders—common carriers.

As prescribed in 239.7411(a), use the following clause:

CANCELLATION OR TERMINATION OF ORDERS—COMMON CARRIERS (JAN 1997)

(a) If the Government cancels any of the services ordered under this agreement/contract, before the services are made available to the Government, or terminates any of these services after they are made available to the Government, the Government shall reimburse the Contractor for the actual nonrecoverable costs the Contractor has reasonably incurred in providing facilities and equipment for which the Contractor has no foreseeable reuse.

(b) The amount of the Government's liability upon cancellation or termination of any of the services ordered under this agreement/contract will be determined under applicable tariffs governing cancellation and termination charges which—

(1) Are filed by the Contractor with a governmental regulatory body, as defined in the Rates, Charges, and Services—Common Carriers clause of this agreement/contract;

(2) Are in effect on the date of termination; and

(3) Provide specific cancellation or termination charges for the facilities and equipment involved or show how to determine the charges.

(c) The amount of the Government's liability upon cancellation or termination of any of the services ordered under this agreement/contract, which are not subject to a governmental regulatory body, will be determined under a mutually agreed schedule in the communication services authorization (CSA) or other contractual document.

(d) If no applicable tariffs are in effect on the date of cancellation or termination or set forth in the applicable CSA or other contractual document, the Government's liability will be determined under the following settlement procedures—

(1) The Contractor agrees to provide the Contracting Officer, in such reasonable detail as the Contracting Officer may require, inventory schedules covering all items of property or facilities in the Contractor's possession, the cost of which is included in the Basic Cancellation or Termination Liability for which the Contractor has no foreseeable reuse.

(2) The Contractor shall use its best efforts to sell property or facilities when the Contractor has no foreseeable reuse or when the Government has not exercised its option to take title under the title to Telecommunications Facilities and Equipment clause of this agreement/contract. The Contractor shall apply any proceeds of the sale to reduce any payments by the Government to the Contractor under a cancellation or termination settlement.

(3) The Contractor shall record actual nonrecoverable costs under established accounting procedures prescribed by the cognizant governmental regulatory authority or, if no such procedures have been prescribed, under generally accepted accounting procedures applicable to the provision of telecommunication services for public use.

(4) The actual nonrecoverable costs are the installed costs of the facilities and equipment, less cost of reusable materials, and less net salvage value. Installed costs shall include the actual cost of equipment and materials specifically provided or used, plus the actual cost of installing (including engineering, labor, supervision, transportation, rights-of-way, and any other items which are chargeable to the capital accounts of the Contractor) less any costs the Government may have directly reimbursed the Contractor under the Special Construction and Equipment Charges clause of this agreement/contract. Deduct from the Contractor's installed cost, the net salvage value (salvage value less cost of removal). In determining net salvage value, give consideration to foreseeable reuse of the facilities and equipment by the Contractor. Make allowance for the cost of dismantling, removal, reconditioning, and disposal of the facilities and equipment when necessary either to the sale of facilities

or their reuse by the Contractor in another location.

(5) The Basic Cancellation Liability is defined as the actual nonrecoverable cost which the Government shall reimburse the Contractor at the time services are cancelled. The Basic Termination Liability is defined as the nonrecoverable cost amortized in equal monthly increments throughout the liability period. Upon termination of services, the Government shall reimburse the Contractor for the nonrecoverable cost less such costs amortized to the date services are terminated. Establish the liability period as mutually agreed to but not to exceed ten years.

(6) When the Basic Cancellation or Termination Liability established by the CSA or other contractual document is based on estimated costs, the Contractor agrees to settle on the basis of actual cost at the time of termination or cancellation.

(7) The Contractor agrees that, if after settlement but within the termination liability period of the services, should the Contractor make reuse of equipment or facilities which were treated as nonreusable or nonsalvagable in the settlement, the Contractor shall reimburse the Government for the value of the equipment or facilities.

(8) The Contractor agrees to exclude—

(i) Any costs which are not included in determining cancellation and termination charges under the Contractor's standard practices or procedures; and

(ii) Charges not ordinarily made by the Contractor for similar facilities or equipment, furnished under similar circumstances.

(e) The Government may, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the canceled or terminated portion of this agreement/contract. The Government may make these payments if in the opinion of the Contracting Officer the total of the payments is within the amount the Contractor is entitled. If the total of the payments is in excess of the amount finally agreed or determined to be due under this clause, the Contractor shall pay the excess to the Government upon demand.

(f) Failure to agree shall be a dispute concerning a question of fact within the meaning of the Disputes clause.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 62 FR 2615, Jan. 17, 1997]

252.239–7008 Reuse arrangements.

As prescribed in 239.7411(a), use the following clause:

REUSE ARRANGEMENTS (DEC. 1991)

(a) When feasible, the Contractor shall reuse canceled or terminated facilities or equipment to minimize the charges to the Government.

(b) If at any time the Government requires that telecommunications facilities or equipment be relocated within the Contractor's service area, the Government shall have the option of paying the costs of relocating the facilities or equipment in lieu of paying any termination or cancellation charge under the Cancellation or Termination of Orders-Common Carriers clause of this agreement/contract. The Basic Termination Liability applicable to the facilities or equipment in their former location shall continue to apply to the facilities and equipment in their new location. Monthly rental charges shall continue to be paid during the period.

(c) When there is another requirement or foreseeable reuse in place of canceled or terminated facilities or equipment, no charge shall apply and the Basic Cancellation or Termination Liability shall be appropriately reduced. When feasible, the Contractor shall promptly reuse discontinued channels or facilities, including equipment for which the Government is obligated to pay a minimum service charge.

(End of clause)

252.239–7009—252.239–7010 [Reserved]

252.239–7011 Special construction and equipment charges.

As prescribed in 239.7411(b), use the following clause:

SPECIAL CONSTRUCTION AND EQUIPMENT CHARGES (DEC. 1991)

(a) The Government will not directly reimburse the Contractor for the cost of constructing any facilities or providing any equipment, unless the Contracting Officer authorizes direct reimbursement.

(b) If the Contractor stops using facilities or equipment which the Government has, in whole or part, directly reimbursed, the Contractor shall allow the Government credit for the value of the facilities or equipment attributable to the Government's contribution. Determine the value of the facilities and equipment on the basis of their foreseeable reuse by the Contractor at the time their use is discontinued or on the basis of the net salvage value, whichever is greater. The Contractor shall promptly pay the Government the amount of any credit.

(c) The amount of the direct special construction charge shall not exceed—

(1) The actual costs to the Contractor; and

(2) An amount properly allocable to the services to be provided to the Government.

(d) The amount of the direct special construction charge shall not include costs incurred by the Contractor which are covered by—

(1) A cancellation or termination liability; or

(2) The Contractor's recurring or other nonrecurring charges.

(e) The Contractor represents that—

(1) Recurring charges for the services, facilities, and equipment do not include in the rate base any costs that have been reimbursed by the Government to the Contractor; and

(2) Depreciation charges are based only on the cost of facilities and equipment paid by the Contractor and not reimbursed by the Government.

(f) If it becomes necessary for the Contractor to incur costs to replace any facilities or equipment, the Government shall assume those costs or reimburse the Contractor for replacement costs at mutually acceptable rates under the following circumstances—

(1) The Government paid direct special construction charges; or

(2) The Government reimbursed the Contractor for those facilities or equipment as a part of the recurring charges; and

(3) The need for replacement was due to circumstances beyond the control and without the fault of the Contractor.

(g) Before incurring any costs under paragraph (f) of this clause, the Government shall have the right to terminate the service under the Cancellation or Termination of Orders clause of this contract.

(End of clause)

252.239–7012 Title to telecommunication facilities and equipment.

As prescribed in 239.7411(b), use the following clause:

TITLE TO TELECOMMUNICATION FACILITIES AND EQUIPMENT (DEC. 1991)

(a) Title to all Contractor furnished facilities and equipment used under this agreement/contract shall remain with the Contractor even if the Government paid the costs of constructing the facilities or equipment. A mutually accepted communications service authorization may provide for exceptions.

(b) The Contractor shall operate and maintain all telecommunication facilities and equipment used under this agreement/contract whether the Government or the Contractor has title.

(End of clause)

252.239–7013 Obligation of the Government.

As prescribed in 239.7411(c), use the following clause:

OBLIGATION OF THE GOVERNMENT (DEC. 1991)

(a) This basic agreement is not a contract. The Government incurs no monetary liability under this agreement.

(b) The Government incurs liability only upon issuance of a communications service authorization under the terms of this agreement.

(End of clause)

252.239–7014 Term of agreement.

As prescribed in 239.7411(c), use the following clause:

TERM OF AGREEMENT (DEC. 1991)

(a) This agreement shall continue in force from year to year, unless terminated by either party by 60 days written notice.

(b) Termination of this agreement does not cancel any communication service authorizations previously issued.

(End of clause)

252.239–7015 Continuation of communication service authorizations.

As prescribed in 239.7411(c), use the following clause:

CONTINUATON OF COMMUNICATION SERVICE AUTHORIZATIONS (DEC. 1991)

(a) All communication service authorizations (CSAs) issued by _____ under Basic Agreement Number ___, dated ___ , are transferred to this basic agreement. The CSAs shall continue in full force and effect as though placed under this agreement.

(b) Communication service authorizations currently in effect which were issued by the activity in paragraph (a) of this clause under other agreements with the Contractor may also be transferred to this agreement.

(End of clause)

252.239–7016 Telecommunications security equipment, devices, techniques, and services.

As prescribed in 239.7411(d), use the following clause:

TELECOMMUNICATIONS SECURITY EQUIPMENT, DEVICES, TECHNIQUES, AND SERVICES (DEC. 1991)

(a) *Definitions.* As used in this clause—

(1) *Securing* means the application of Government-approved telecommunications security equipment, devices, techniques, or services to contractor telecommunications systems.

(2) *Sensitive information* means any information the loss, misuse, or modification of which, or unauthorized access to, could adversely affect the national interest or the conduct of Federal programs, or the privacy to which individuals are entitled under 5 U.S.C. 552a (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or Act of Congress to be kept secret in the interest of national defense or foreign policy.

(3) *Telecommunications systems* means voice, record, and data communications, including management information systems and local data networks that connect to external transmission media, when employed by Government agencies, contractors, and subcontractors to transmit—

(i) Classified or sensitive information;

(ii) Matters involving intelligence activities, cryptologic activities related to national security, the command and control of military forces, or equipment that is an integral part of a weapon or weapons system; or

(iii) Matters critical to the direct fulfillment of military or intelligence missions.

(b) This solicitation/contract identifies classified or sensitive information that requires securing during telecommunications and requires the Contractor to secure telecommunications systems. The Contractor agrees to secure information and systems at the following location: (Identify the location.)

(c) To provide the security, the Contractor shall use Government-approved telecommunications equipment, devices, techniques, or services. A list of the approved equipment, etc. may be obtained from (identify where list can be obtained). Equipment, devices, techniques, or services used by the Contractor must be compatible or interoperable with (list and identify the location of any telecommunications security equipment, device, technique, or service currently being used by the technical or requirements organization or other offices with which the Contractor must communicate).

(d) Except as may be provided elsewhere in this contract, the Contractor shall furnish all telecommunications security equipment, devices, techniques, or services necessary to perform this contract. The Contractor must meet ownership eligibility conditions for communications security equipment designated as controlled cryptographic items.

(e) The Contractor agrees to include this clause, including this paragraph (e), in all subcontracts which require securing telecommunications.

(End of clause)

252.241–7000 Superseding contract.

As prescribed in 241.007–70(a), use the following clause:

SUPERSEDING CONTRACT (DEC. 1991)

This contract supersedes contract No. _____, dated ___ which provided similar services. Any capital credits accrued to the Government, any remaining credits due to the Government under the connection charge, or any termination liability are transferred to this contract, as follows:

CAPITAL CREDITS

(List years and accrued credits by year and separate delivery points.)

OUTSTANDING CONNECTION CHARGE CREDITS

(List by month and year the amount credited and show the remaining amount of outstanding credits due the Government.)

TERMINATION LIABILITY CHARGES

(List by month and year the amount of monthly facility cost recovered and show the remaining amount of facility cost to be recovered.)

(End of clause)

252.241–7001 Government access.

As prescribed in 241.007–70(b), use the following clause:

GOVERNMENT ACCESS (DEC. 1991)

Authorized representatives of the Government may have access to the Contractor's on-base facilities upon reasonable notice or in case of emergency.

(End of clause)

252.242–7000 Postaward conference.

As prescribed in 242.570, use the following clause:

POSTAWARD CONFERENCE (DEC. 1991)

The Contractor agrees to attend any postaward conference convened by the contracting activity or contract administration office in accordance with Federal Acquisition Regulation subpart 42.5.

(End of clause)

252.242–7001—252.242–7002 [Reserved]

252.242–7003 Application for U.S. government shipping documentation/instructions.

As prescribed in 242.1404–2–70, use the following clause:

APPLICATION FOR U.S. GOVERNMENT SHIPPING DOCUMENTATION/INSTRUCTIONS (DEC. 1991)

The Contractor shall request Government bills of lading by submitting a DD Form 1659, Application for U.S. Government Shipping Documentation/Instructions, to the—

(a) Transportation Officer, if named in the contract schedule; or

(b) Contract administration office.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 62 FR 34135, June 24, 1997]

252.242–7004 Material management and accounting system.

As prescribed in 242.7206, use the following clause:

MATERIAL MANAGEMENT AND ACCOUNTING SYSTEM (SEP 1996)

(a) *Definitions.* As used in this clause—

(1) *Material management and accounting system* means the Contractor's system or systems for planning, controlling, and accounting for the acquisition, use, issuing, and disposition of material. Material management and accounting systems may be manual or automated. They may be stand-alone systems or they may be integrated with planning, engineering, estimating, purchasing, inventory, accounting, or other systems.

(2) *Valid time-phased requirements* means material which is—

(i) Needed to fulfill the production plan, including reasonable quantities for scrap, shrinkage, yield, etc.; and

(ii) Charged/billed to contracts or other cost objectives in a manner consistent with the need to fulfill the production plan.

(3) *Contractor* means a business unit as defined in section 31.001 of the Federal Acquisition Regulation (FAR).

(b) *General.* The Contractor agrees to—

(1) Maintain a material management and accounting system (MMAS) that—

(i) Reasonably forecasts material requirements;

(ii) Ensures that costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements; and

(iii) Maintains a consistent, equitable, and unbiased logic for costing of material transactions.

(2) Assess its MMAS and take reasonable action to comply with the MMAS standards in paragraph (f) of this clause.

(c) *Applicability.* Paragraphs (d) and (e) of this clause apply only if the Contractor—

(1) Is a large business; and

(2) Received, in its fiscal year preceding award of this contract, Department of Defense prime contracts or subcontracts, and their modifications totaling—

(i) $70 million or more; or

(ii) $30 million or more (but less than $70 million), and is notified in writing by the Contracting Officer that paragraphs (d) and (e) apply.

(d) *Disclosure, demonstration, and maintenance requirements.* (1) The Contractor shall—

(i) Disclose its MMAS to the Administrative Contracting Officer in writing; and

(ii) If requested by the Administrative Contracting Officer, demonstrate that the MMAS conforms to the standards in paragraph (f) of this clause.

(2) An MMAS disclosure is adequate when the Contractor has provided the Administrative Contracting Officer with documentation which—

(i) Accurately describes those policies, procedures, and practices that the Contractor currently uses in its MMAS; and

(ii) Provides sufficient detail for the Government to reasonably make an informed judgment regarding the adequacy of the MMAS.

(3) An MMAS demonstration is adequate when the Contractor has provided the Administrative Contracting Officer—

(i) Sufficient evidence to demonstrate the degree of compliance of its MMAS with the standards at paragraph (f) of this clause; and

(ii) Identification of any significant deficiencies, the estimated cost impact of the deficiency, and a comprehensive corrective action plan.

(4) The Contractor shall disclose significant changes in its MMAS to the Administrative Contracting Officer within 30 days of implementation.

(5) If the contractor desires the Government to protect such information as privileged or confidential, the Contractor shall—

(i) Notify the Government representative to whom the information is submitted, i.e., the ACO, or the auditor; and

(ii) Ensure an appropriate legend is on the face of the document(s) at the time of submission.

(e) *Deficiencies.* (1) If the Contractor receives a report which identifies deficiencies in its MMAS, the Contractor agrees to respond as follows—

(i) If the Contractor agrees with the report findings and recommendations, the Contractor shall—

(A) Within 30 days, state its agreement in writing; and

(B) Within 60 days, correct the deficiencies or submit a corrective action plan.

(ii) If the Contractor disagrees with the report findings and recommendations, the Contractor shall, within 30 days, state its rationale for each area of disagreement.

(2) The Administrative Contracting Officer shall evaluate the Contractor's response and notify the Contractor of the—

(i) Determination concerning remaining deficiencies;

(ii) Adequacy of any proposed or completed corrective action plan; and

(iii) Need for any new or revised corrective action plan.

(f) *MMAS standards.* MMAS systems shall have adequate internal accounting and administrative controls to ensure system and data integrity, and comply with the following:

(1) Have an adequate system description including policies, procedures, and operating instructions which comply with the Federal Acquisition Regulation and Defense FAR Supplement;

(2) Ensure that costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements as impacted by minimum/economic order quantity restrictions—

(i) A 98 percent bill of material accuracy and a 95 percent master production schedule accuracy are desirable as a goal in order to ensure that requirements are both valid and appropriately time-phased.

(ii) If systems have accuracy levels below these, the Contractor shall demonstrate that—

(A) There is no material harm to the Government due to lower accuracy levels; and

(B) The cost to meet the accuracy goals is excessive in relation to the impact on the Government;

(3) Provide a mechanism to identify, report, and resolve system control weaknesses and manual override. Systems should identify operational exceptions such as excess/residual inventory as soon as known;

(4) Provide audit trails and maintain records (manual and those in machine readable form) necessary to evaluate system logic and to verify through transaction testing that the system is operating as desired;

(5) Establish and maintain adequate levels of record accuracy, and include reconciliation of recorded inventory quantities to physical inventory by part number on a periodic basis. A 95 percent accuracy level is desirable. If systems have an accuracy level below 95 percent, the Contractor shall demonstrate that—

(i) There is no material harm to the Government due to lower accuracy levels; and

(ii) The cost to meet the accuracy goal is excessive in relation to the impact on the Government;

(6) Provide detailed descriptions of circumstances which will result in manual or system generated transfers of parts;

(7) Maintain a consistent, equitable, and unbiased logic for costing of material transactions—

(i) The Contractor shall maintain and disclose written policies describing the transfer methodology and the loan/pay-back technique.

(ii) The costing methodology may be standard or actual cost, or any of the inventory costing methods in 48 CFR 9904.411–50(b). Consistency shall be maintained across all contract and customer types, and from accounting period to accounting period for initial charging and transfer charging.

(iii) The system should transfer parts and associated costs within the same billing period. In the few instances where this may not be appropriate, the Contractor may accomplish the material transaction using a loan/pay-back technique. The ''loan/pay-back technique'' means that the physical part is moved temporarily from the contract, but the cost of the part remains on the contract. The procedures for the loan/pay-back technique must be approved by the Administrative Contracting Officer. When the technique is used, the Contractor shall have controls to ensure—

(A) Parts are paid back expeditiously;

(B) Procedures and controls are in place to correct any overbilling that might occur;

(C) Monthly, at a minimum, identification of the borrowing contract and the date the part was borrowed; and

(D) The cost of the replacement part is charged to the borrowing contract;

(8) Where allocations from common inventory accounts are used, have controls (in addition to those in paragraphs (b)(2) and (7) of this clause) to ensure that—

(i) Reallocations and any credit due are processed no less frequently than the routine billing cycle;

(ii) Inventories retained for requirements which are not under contract are not allocated to contracts; and

(iii) Algorithms are maintained based on valid and current data;

(9) Notwithstanding FAR 45.505–3(f)(1)(ii), have adequate controls to ensure that physically commingled inventories that may include material for which costs are charged or allocated to fixed-price, cost-reimbursement, and commercial contracts do not compromise requirements of any of the standards in paragraphs (f)(1) through (8) of this clause. Government furnished material shall not be—

(i) Physically commingled with other material; or

(ii) Used on commercial work; and

(10) Be subjected to periodic internal audits to ensure compliance with established policies and procedures.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 61 FR 50456, Sept. 26, 1996]

252.242–7005 Cost/Schedule Status Report.

As prescribed in 242.1107–70(a), use the following clause:

COST/SCHEDULE STATUS REPORT (MAR 1997)

(a) The Contractor shall use management procedures in the performance of this contract that provide for—

(1) Planning and control of costs;

(2) Measurement of performance (value for completed tasks); and

(3) Generation of timely and reliable information for the cost/schedule status report (C/SSR).

(b) As a minimum, these procedures must provide for—

(1) Establishing the time-phased budgeted cost of work scheduled (including work authorization, budgeting, and scheduling), the budgeted cost for work performed, the actual cost of work performed, the budget at completion, the estimate at completion, and provisions for subcontractor performance measurement and reporting;

(2) Applying all direct and indirect costs and provisions for use and control of management reserve and undistributed budget;

(3) Incorporating changes to the contract budget base for both Government directed changes and internal replanning;

(4) Establishing constraints to preclude subjective adjustment of data to ensure performance measurement remains realistic. Unless the Contracting Officer provides prior written approval, in no case shall the total allocated budget exceed the contract budget base. For cost-reimbursement contracts, the contract budget base shall exclude changes for cost growth increases, other than for authorized changes to the contract scope; and

(5) Establishing the capability to accurately identify and explain significant cost and schedule variances, both on a cumulative basis and projected at completion basis.

(c) The Contractor may use a cost/schedule control system that has been recognized by the cognizant Administrative Contracting Officer (ACO) as complying with the earned value management system criteria provided in DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs.

(d) The Government may require an integrated baseline review within 180 calendar days after (1) contract award, (2) the exercise of significant contract options, or (3) the incorporation of major modifications. The purpose of the integrated baseline review is for the Government and the Contractor to jointly assess areas, such as the Contractor's planning, to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks. The Contractor shall provide necessary documents and data which describe the methods of planning, control and data generation in actual operation and satisfy the requirements of paragraph (a) of this clause.

(e) The Contractor shall provide access to all pertinent records, company procedures, and data requested by the ACO, or authorized representative, to—

(1) Show proper implementation of the procedures generating the cost and schedule information being used to satisfy the C/SSR contractual data requirements to the Government; and

(2) Ensure continuing application of the accepted company procedures in satisfying the C/SSR data item.

(f) The Contractor shall submit any substantive changes to the procedures and their impact to the ACO for review.

(g) The Contractor shall require a subcontractor to furnish C/SSR in each case where the subcontract is other than firm-fixed-price, is 12 months or more in duration, and has critical or significant tasks related to the prime contract. Critical or significant tasks shall be defined by mutual agreement between the Government and Contractor. Each subcontractor's reported cost and schedule information shall be incorporated into the Contractor's C/SSR.

(End of clause)

[62 FR 9992, Mar. 5, 1997, as amended at 62 FR 34135, June 24, 1997]

252.242–7006 Cost/Schedule Status Report Plans.

As prescribed in 242.1107–70(b), use the following provision:

COST/SCHEDULE STATUS REPORT PLANS (MAR 1997)

(a) The offeror shall submit a written summary of the management procedures it will establish, maintain, and use in the performance of any resultant contract to comply with the requirements of the clause at 252.242–7005, Cost/Schedule Status Report.

(b) If the offeror proposes to use a cost/schedule control system that has been recognized by the cognizant Administrative Contracting Officer as complying with the earned value management system criteria of DoD 5000.2–R, Mandatory Procedures for

Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs, the offeror may submit a copy of the documentation of such recognition instead of the written summary required by paragraph (a) of this provision.

(End of provision)

[62 FR 9992, Mar. 5, 1997, as amended at 62 FR 34135, June 24, 1997]

§ 252.243–7000 Engineering change proposals.

As prescribed in 243.205–70, use the following clause:

ENGINEERING CHANGE PROPOSALS (JUL 1997)

(a) The Contracting Officer may ask the Contractor to prepare engineering change proposals for engineering changes within the scope of this contract. Upon receipt of a written request from the Contracting Officer, the Contractor shall prepare and submit an engineering change proposal in accordance with the instructions of MIL–STD–973, in effect on the date of contract award.

(b) The Contractor may initiate engineering change proposals. Contractor initiated engineering change proposals shall include a ''not to exceed'' price* or a ''not less than'' price* and delivery adjustment. If the Contracting Officer orders the engineering change, the increase shall not exceed nor the decrease be less than the ''not to exceed'' or ''not less than'' amounts**.

(c) When the price** of the engineering change is $500,000 or more, the Contractor shall submit—

(1) A completed SF 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required); and

(2) At the time of agreement on price*, or on another date agreed upon between the parties, a signed Certificate of Current Cost or Pricing Data.

(End of clause)

ALTERNATE I (MAY 1994)

As prescribed in 243.205–70, add the following paragraph (d) to the basic clause:

(d) If the price* of a Contractor initiated engineering change is _____*** or less, the change, if ordered, shall be made at no adjustment in the contract price*.

[59 FR 27677, May 27, 1994, as amended at 62 FR 40473, July 29, 1997]

252.243–7001 Pricing of contract modifications.

As prescribed in 243.205–71, use the following clause:

PRICING OF CONTRACT MODIFICATIONS (DEC. 1991)

When costs are a factor in any price adjustment under this contract, the contract cost principles and procedures in FAR part 31 and DFARS part 231, in effect on the date of this contract, apply.

(End of clause)

252.243–7002 Certification of requests for equitable adjustment.

As prescribed in 243.205–72, use the following clause:

CERTIFICATION OF REQUESTS FOR EQUITABLE ADJUSTMENT (JULY 1997)

(a) In accordance with 10 U.S.C. 2410(a), any request for equitable adjustment to contract terms that exceeds the simplified acquisition threshold shall bear, at the time of submission, the following certificate executed by an individual authorized to certify the request on behalf of the Contractor:

I certify that the request is made in good faith, and that the supporting data are accurate and complete to the best of my knowledge and belief.

_____

(Official's Name)

_____

(Title)

(b) The certification in paragraph (a) of this clause requires full disclosure of all relevant facts, including—

(1) Cost or pricing data if required in accordance with FAR 15.804–2; and

(2) Actual cost data and data to support any estimated costs, even if cost of pricing data are not required.

(c) The certification requirement in paragraph (a) of this clause does not apply to—(1) Requests for routine contract payments; for example, requests for payment for accepted supplies and services, routine vouchers under a cost-reimbursement type contract, or progress payment invoices; or

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*Use a term suitable for the type of contract.

**In cost reimbursement type contracts, replace this sentence with the following: ''Change orders issued under the Changes clause of this contract are not an authorization to exceed the estimated cost in the schedule unless there is a statement in the change order, or other contract modification, increasing the estimated cost.''

***Insert a percentage of the contract price or a dollar amount.

(2) Final adjustments under an incentive provision of the contract.

(d) The amount requested shall accurately reflect the contract adjustment for which the Contractor believes the Government is liable. The request shall include only costs for performing the change, and shall not include any costs that already have been reimbursed or that have been separately claimed. All indirect costs included in the request shall be properly allocable to the change in accordance with applicable acquisition regulations.

(End of clause)

[62 FR 37147, July 11, 1997; 62 FR 49306, Sept. 19, 1997]

252.244–7000 Subcontracts for commercial items and commercial components (DoD contracts).

As prescribed in 244.403, use the following clause:

SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (DOD CONTRACTS) (FEB 1997)

In addition to the clauses listed in paragraph (c) of the Subcontracts for Commercial Items and Commercial Components clause of this contract, the Contractor shall include the terms of the following clause, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

252.225–7014, Preference for Domestic Specialty Metals, Alternate I (10 U.S.C. 2241 note).

(End of clause)

[62 FR 5780, Feb. 7, 1997]

252.245–7000 Government-furnished mapping, charting, and geodesy property.

As prescribed in 245.310–70, use the following clause:

GOVERNMENT-FURNISHED MAPPING, CHARTING, AND GEODESY PROPERTY (DEC. 1991)

(a) *Definition—Mapping, charting, and geodesy (MC&G) property* means geodetic, geomagnetic, gravimetric, aeronautical, topographic, hydrographic, cultural, and toponymic data presented in the form of topographic, planimetric, relief, or thematic maps and graphics; nautical and aeronautical charts and publications; and in simulated, photographic, digital, or computerized formats.

(b) The Contractor shall not duplicate, copy, or otherwise reproduce MC&G property for purposes other than those necessary for performance of the contract.

(c) At the completion of performance of the contract, the Contractor, as directed by the Contracting Officer, shall either destroy or return to the Government all Government-furnished MC&G property not consumed in the performance of this contract.

(End of clause)

§ 252.245–7001 Reports of Government property.

As prescribed in 245.505–14(a), use the following clause:

REPORTS OF GOVERNMENT PROPERTY (MAY 1994)

(a) The Contractor shall provide an annual report—

(1) For all DoD property for which the Contractor is accountable under the contract;

(2) Prepared in accordance with the requirements of DD Form 1662, DoD Property in the Custody of Contractors, or approved substitute, including instructions on the reverse side of the form;

(3) In duplicate, to the cognizant Government property administrator, no later than October 31.

(b) The Contractor is responsible for reporting all Government property accountable to this contract, including that at subcontractor and alternate locations.

(End of clause)

[59 FR 27677, May 27, 1994]

252.246–7000 Material inspection and receiving report.

As prescribed in 246.370, use the following clause:

MATERIAL INSPECTION AND RECEIVING REPORT (DEC. 1991)

At the time of each delivery of supplies or services under this contract, the Contractor shall prepare and furnish to the Government a material inspection and receiving report in the manner and to the extent required by appendix F, Material Inspection and Receiving Report, of the Defense FAR Supplement.

(End of clause)

252.246–7001 Warranty of data.

As prescribed in 246.710 (1), use the following clause:

WARRANTY OF DATA (DEC. 1991)

(a) *Definition—Technical data* has the same meaning as given in the clause in this contract entitled, Rights in Technical Data and Computer Software.

(b) *Warranty.* Notwithstanding inspection and acceptance by the Government of technical data furnished under this contract, and notwithstanding any provision of this contract concerning the conclusiveness of acceptance, the Contractor warrants that all technical data delivered under this contract will at the time of delivery conform with the specifications and all other requirements of this contract. The warranty period shall extend for three years after completion of the delivery of the line item of data (as identified in DD Form 1423, Contract Data Requirements List) of which the data forms a part; or any longer period specified in the contract.

(c) *Contractor notification.* The Contractor agrees to notify the Contracting Officer in writing immediately of any breach of the above warranty which the Contractor discovers within the warranty period.

(d) *Remedies.* The following remedies shall apply to all breaches of the warranty, whether the Contractor notifies the Contracting Officer in accordance with paragraph (c) of this clause or if the Government notifies the Contractor of the breach in writing within the warranty period:

(1) Within a reasonable time after such notification, the Contracting Officer may—

(i) By written notice, direct the Contractor to correct or replace at the Contractor's expense the nonconforming technical data promptly; or

(ii) If the Contracting Officer determines that the Government no longer has a requirement for correction or replacement of the data, or that the data can be more reasonably corrected by the Government, inform the Contractor by written notice that the Government elects a price or fee adjustment instead of correction or replacement.

(2) If the Contractor refuses or fails to comply with a direction under paragraph (d)(1)(i) of this clause, the Contracting Officer may, within a reasonable time of the refusal or failure—

(i) By contract or otherwise, correct or replace the nonconforming technical data and charge the cost to the Contractor; or

(ii) Elect a price or fee adjustment instead of correction or replacement.

(3) The remedies in this clause represent the only way to enforce the Government's rights under this clause.

(e) The provisions of this clause apply anew to that portion of any corrected or replaced technical data furnished to the Government under paragraph (d)(1)(i) of this clause.

(End of clause)

ALTERNATE I (DEC. 1991)

As prescribed in 246.710(2), substitute the following for paragraph (d)(3) of the basic clause:

(3) In addition to the remedies under paragraphs (d)(1) and (2) of this clause, the Contractor shall be liable to the Government for all damages to the Government as a result of the breach of warranty.

(i) The additional liability under paragraph (d)(3) of this clause shall not exceed 75 percent of the target profit.

(ii) If the breach of the warranty is with respect to the data supplied by an equipment subcontractor, the limit of the Contractor's liability shall be—

(A) Ten percent of the total subcontract price in a firm fixed price subcontract;

(B) Seventy-five percent of the total subcontract fee in a cost-plus-fixed-fee or cost-plus-award-fee subcontract; or

(C) Seventy-five percent of the total subcontract target profit or fee in a fixed-price or cost-plus-incentive-type contract.

(iii) Damages due the Government under the provisions of this warranty are not an allowable cost.

(iv) The additional liability in paragraph (d)(3) of this clause shall not apply—

(A) With respect to the requirements for product drawings and associated lists, special inspection equipment (SIE) drawings and associated lists, special tooling drawings and associated lists, SIE operating instructions, SIE descriptive documentation, and SIE calibration procedures under MIL–T–31000, General Specification for Technical Data Packages, Amendment 1, or MIL–T–47500, General Specification for Technical Data Packages, Supp 1, or drawings and associated lists under level 2 or level 3 of MIL–D–1000A, Engineering and Associated Data Drawings, or DoD–D–1000B, Engineering and Associated Lists Drawings (Inactive for New Design) Amendment 4, Notice 1; or drawings and associated lists under category E or I of MIL–D–1000, Engineering and Associated Lists Drawings, provided that the data furnished by the Contractor was current, accurate at time of submission, and did not involve a significant omission of data necessary to comply with the requirements; or

(B) To defects the Contractor discovers and gives written notice to the Government before the Government discovers the error.

ALTERNATE II (DEC. 1991)

As prescribed at 246.710(3), substitute the following paragraph for paragraph (d)(3) of the basic clause:

(3) In addition to the remedies under paragraphs (d)(1) and (2) of this clause, the Contractor shall be liable to the Government for

all damages to the Government as a result of the breach of the warranty.

(i) The additional liability under paragraph (d)(3) of this clause shall not exceed ten percent of the total contract price.

(ii) If the breach of the warranty is with respect to the data supplied by an equipment subcontractor, the limit of the Contractor's liability shall be—

(A) Ten percent of the total subcontract price in a firm fixed-price subcontract;

(B) Seventy-five percent of the total subcontract fee in a cost-plus-fixed-fee or cost-plus-award-fee subcontract; or

(C) Seventy-five percent of the total subcontract target profit or fee in a fixed-price or cost-plus-incentive-type contract.

(iii) The additional liability specified in paragraph (d)(3) of this clause shall not apply—

(A) With respect to the requirements for product drawings and associated lists, special inspection equipment (SIE) drawings and associated lists, special tooling drawings and associated lists, SIE operating instructions, SIE descriptive documentation, and SIE calibration procedures under MIL–T–31000, General Specification for Technical Data Packages, Amendment 1, or MIL–T–47500, General Specification for Technical Data Packages, Supp 1, or drawings and associated lists under level 2 or level 3 of MIL–D–1000A, Engineering and Associated Data Drawings, or DoD–D–1000B, Engineering and Associated Lists Drawings (Inactive for New Design) Amendment 4, Notice 1; or drawings and associated lists under category E or I of MIL–D–1000, Engineering and Associated Lists Drawings, provided that the data furnished by the Contractor was current, accurate at time of submission, and did not involve a significant omission of data necessary to comply with the requirements; or

(B) To defects the Contractor discovers and gives written notice to the Government before the Government discovers the error.

252.246–7002 Warranty of construction (Germany).

As prescribed in 246.710(4), use the following clause:

WARRANTY OF CONSTRUCTION (GERMANY) (JUNE 1997)

(a) In addition to any other representations in this contract, the Contractor warrants, except as provided in paragraph (j) of this clause, that the work performed under this contract conforms to the contract requirements and is free of any defect of equipment, material, or design furnished or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

(b) This warranty shall continue for the period(s) specified in Section 13, VOB, Part B, commencing from the date of final acceptance of the work under this contract. If the Government takes possession of any part of the work before final acceptance, this warranty shall continue for the period(s) specified in Section 13, VOB, Part B, from the date the Government takes possession.

(c) The Contractor shall remedy, at the Contractor's expense, any failure to conform or any defect. In addition, the Contractor shall remedy, at the Contractor's expense, any damage to Government-owned or -controlled real or personal property when that damage is the result of—

(1) The Contractor's failure to conform to contract requirements; or

(2) Any defect of equipment, material, or design furnished or workmanship performed.

(d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause.

(e) The Contracting Officer shall notify the Contractor, in writing, within a reasonable period of time after the discovery of any failure, defect, or damage.

(f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable period of time after receipt of notice, the Government shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall—

(1) Obtain all warranties that would be given in normal commercial practice;

(2) Require all warranties to be executed in writing, for the benefit of the Government, if directed by the Contracting Officer; and

(3) Enforce all warranties for the benefit of the Government as directed by the Contracting Officer.

(h) In the event the Contractor's warranty under paragraph (b) of this clause has expired, the Government may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

(i) Unless a defect is caused by the Contractor's negligence, or the negligence of a subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Government or for the repair of any damage resulting from any defeat in Government-furnished material or design.

(j) This warranty shall not limit the Government's right under the Inspection clause of this contract, with respect to latent defects, gross mistakes, or fraud.

(End of clause)

[62 FR 34135, June 24, 1997; 62 FR 49306, Sept. 19, 1997]

252.247–7000 Hardship conditions.

As prescribed in 247.270–7(a), use the following clause:

HARDSHIP CONDITIONS (DEC. 1991)

(a) The Contractor shall promptly notify the Contracting Officer of unusual conditions associated with loading or unloading a particular cargo, which will work a hardship on the Contractor if loaded or unloaded at the basic commodity rates.

(b) Unusual conditions include, but are not limited to, inaccessibility of place of stowage to the ship's cargo gear, side port operations, and small quantities of cargo in any one hatch.

(c) The Contracting Officer shall investigate the conditions promptly after receiving the notice. If the Contracting Officer finds that the conditions are unusual and do materially affect the cost of loading or unloading, the Contracting Officer will authorize payment at the extra-labor rates set forth in the schedule of rates of this contract.

(End of clause)

252.247–7001 Price adjustment.

As prescribed in 247.270–7(b), use the following clause:

PRICE ADJUSTMENT (JAN 1997)

(a) The Contractor warrants that the prices set forth in this contract—

(1) Are based upon the wage rates, allowances, and conditions set forth in the collective bargaining agreements between the Contractor and its employees, in effect as of (*insert date*), and which are generally applicable to the ports where work under this contract is performed;

(2) Apply to operations by the Contractor on non-Government work as well as under this contract; and

(3) Do not include any allowance for cost increases that may—

(i) Become effective under the terms of the collective bargaining agreements after the date in paragraph (a)(1) of this clause; or

(ii) Result from modification of the collective bargaining agreements after the date in paragraph (a)(1).

(b) The Contractor shall notify the Contracting Officer within 60 days of receipt of notice of any changes (increase or decrease) in the wage rates, allowances, fringe benefits, and conditions that apply to its direct labor employees, if the changes—

(1) Are pursuant to the provisions of the collective bargaining agreements; or

(2) Are a result of effective modifications to the agreements; and

(3) Would change the Contractor's costs to perform this contract.

(c) The Contractor shall include in its notification—

(1) A proposal for an adjustment in the contract commodity, activity, or work-hour prices; and

(2) Data, in such form as the Contracting Officer may require, explaining the—

(i) Causes;

(ii) Effective date; and

(iii) Amount of the increase or decrease in the Contractor's proposal for the adjustment.

(d) Promptly upon receipt of any notice and data described in paragraph (c), the Contractor and the Contracting Officer shall negotiate an adjustment in the existing contract commodity, activity, or man-hour prices. However, no upward adjustment of the existing commodity, activity, or work-hour prices will be allowed in excess of _____ percent per year, except as provided in the Changes clause of this contract.

(1) Changes in the contract prices shall reflect, in addition to the direct and variable indirect labor costs, the associated changes in the costs for social security, unemployment compensation, taxes, and workman's compensation insurance.

(2) There will be no adjustment to increase the dollar amount allowances of the Contractor's profit.

(3) The agreed upon adjustment, its effective date, and the revised commodity, activity, or work-hour prices for services set forth in the schedule of rates, shall be incorporated in the contract by supplemental agreement.

(e) There will be no adjustment for any changes in the quantities of labor that the Contractor contemplated for each specific commodity, except as may result from modifications of the collective bargaining agreements. For the purpose of administering this clause, the Contractor shall submit to the Contracting Officer, within five days after award, the accounting data and computations the Contractor used to determine its estimated efficiency rate in the performance of this contract, to include the Contractor's computation of the costs apportioned for each rate set forth in the schedule of rates.

(f) Failure of the parties to agree to an adjustment under this clause will be deemed to be a dispute concerning a question of fact within the meaning of the Disputes clause of this contract. The Contractor shall continue performance pending agreement on, or determination of, any such adjustment and its effective date.

(g) The Contractor shall include with the final invoice submitted under this contract a statement that the Contractor has not experienced a decrease in rates of pay for labor, or that the Contractor has given notice of all such decreases in compliance with paragraph (b) of this clause.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 62 FR 2615, Jan. 17, 1997]

252.247–7002 Revision of prices.

As prescribed in 247.270–7(c), use the following clause:

REVISION OF PRICES (DEC. 1991)

(a) *Definition. Wage adjustment,* as used in this clause, means a change in the wages, salaries, or other terms or conditions of employment which—

(1) Substantially affects the cost of performing this contract;

(2) Is generally applicable to the port where work under this contract is performed; and

(3) Applies to operations by the Contractor on non-Government work as well as to work under this contract.

(b) *General.* The prices fixed in this contract are based on wages and working conditions established by collective bargaining agreements, and on other conditions in effect on the date of this contract. The Contracting Officer and the Contractor may agree to increase or decrease such prices in accordance with this clause.

(c) *Demand for negotiation.* (1) At any time, subject to the limitations specified in this clause, either the Contracting Officer or the Contractor may deliver to the other a written demand that the parties negotiate to revise the prices under this contract.

(2) No such demand shall be made before 90 days after the date of this contract, and thereafter neither party shall make a demand having an effective date within 90 days of the effective date of any prior demand. However, this limitation does not apply to a wage adjustment during the 90 day period.

(3) Each demand shall specify a date (the same as or subsequent to the date of the delivery of the demand) as to when the revised prices shall be effective. This date is the effective date of the price revision.

(i) If the Contractor makes a demand under this clause, the demand shall briefly state the basis of the demand and include the statements and data referred to in paragraph (d) of this clause.

(ii) If the demand is made by the Contracting Officer, the Contractor shall furnish the statements and data within 30 days of the delivery of the demand.

(d) *Submission of data.* At the times specified in paragraphs (c)(3)(i) and (ii) of this clause, the Contractor shall submit—

(1) A new estimate and breakdown of the unit cost and the proposed prices for the services the Contractor will perform under this contract after the effective date of the price revision, itemized to be consistent with the original negotiations of the contract;

(2) An explanation of the difference between the original (or last preceding) estimate and the new estimate;

(3) Such relevant operating data, cost records, overhead absorption reports, and accounting statements as may be of assistance in determining the accuracy and reliability of the new estimate;

(4) A statement of the actual costs of performance under this contract to the extent that they are available at the time of the negotiation of the revision of prices under this clause; and

(5) Any other relevant data usually furnished in the case of negotiations of prices under a new contract. The Government may examine and audit the Contractor's accounts, records, and books as the Contracting Officer considers necessary.

(e) *Negotiations.* (1) Upon the filing of the statements and data required by paragraph (d) of this clause, the Contractor and the Contracting Officer shall negotiate promptly in good faith to agree upon prices for services the Contractor will perform on and after the effective date of the price revision.

(2) If the prices in this contract were established by competitive negotiation, they shall not be revised upward unless justified by changes in conditions occurring after the contract was awarded.

(3) The agreement reached after each negotiation will be incorporated into the contract by supplemental agreement.

(f) *Disagreements.* If, within 30 days after the date on which statements and data are required pursuant to paragraph (c) of this clause, the Contracting Officer and the Contractor fail to agree to revised prices, the failure to agree shall be resolved in accordance with the Disputes clause of this contract. The prices fixed by the Contracting Officer will remain in effect for the balance of the contract, and the Contractor shall continue performance.

(g) *Retroactive changes in wages or working conditions.* (1) In the event of a retroactive wage adjustment, the Contractor or the Contracting Officer may request an equitable adjustment in the prices in this contract.

(2) The Contractor shall request a price adjustment within 30 days of any retroactive wage adjustment. The Contractor shall support its request with—

(i) An estimate of the changes in cost resulting from the retroactive wage adjustment;

(ii) Complete information upon which the estimate is based; and

(iii) A certified copy of the collective bargaining agreement, arbitration award, or other document evidencing the retroactive wage adjustment.

(3) Subject to the limitation in paragraph (g)(2) of this clause as to the time of making a request, completion or termination of this

contract shall not affect the Contractor's right under paragraph (g) of this clause.

(4) In case of disagreement concerning any question of fact, including whether any adjustment should be made, or the amount of such adjustment, the disagreement will be resolved in accordance with the Disputes clause of this contract.

(5) The Contractor shall notify the Contracting Officer in writing of any request by or on behalf of the employees of the Contractor which may result in a retroactive wage adjustment. The notice shall be given within 20 days after the request, or if the request occurs before contract execution, at the time of execution.

(End of clause)

252.247–7003 Termination.

As prescribed in 247.270–7(d), use the following clause:

TERMINATION (DEC. 1991)

(a) Either the Contracting Officer or the Contractor may terminate this contract at any time upon 60 days (or such other number of days provided in the Schedule) written notice to the other. Termination under this clause does not affect any obligation or liability that may have accrued before the termination.

(b) Upon termination of this contract under either paragraph (a) or the Default clause of this contract, the Government shall pay the Contractor any amount due for services performed under this contract to the date of termination.

(c) In the event of partial termination, payment for services furnished under the portion of the contract not terminated shall be in accordance with the terms of this contract.

(d) Any payments under this clause shall be without prejudice to any Government claim against the Contractor. The Government has the right to offset any such claims against any such payment.

(End of clause)

252.247–7004 Indefinite quantities—fixed charges.

As prescribed in 247.270–7(e), use the following clause:

INDEFINITE QUANTITIES—FIXED CHARGES (DEC. 1991)

The amount of work and services the Contractor may be ordered to furnish shall be the amount the Contracting Officer may order from time to time. In any event, the Government is obligated to compensate the Contractor the monthly lump sum specified in the Schedule entitled Fixed Charges, for each month or portion of a month the contract remains in effect.

(End of clause)

252.247–7005 Indefinite quantities—no fixed charges.

As prescribed in 247.270–7(f), use the following clause:

INDEFINITE QUANTITIES—NO FIXED CHARGES (DEC. 1991)

The amount of work and services the Contractor may be ordered to furnish shall be the amount the Contracting Officer may order from time to time. In any event, the Government shall order, during the term of this contract, work or services having an aggregate value of not less than $100.

(End of clause)

252.247–7006 Removal of contractor's employees.

As prescribed in 247.270–7(g), use the following clause:

REMOVAL OF CONTRACTOR'S EMPLOYEES (DEC. 1991)

The Contractor agrees to use only experienced, responsible, and capable people to perform the work. The Contracting Officer may require that the Contractor remove from the job, employees who endanger persons or property, or whose continued employment under this contract is inconsistent with the interest of military security.

(End of clause)

252.247–7007 Liability and insurance.

As prescribed in 247.270–7(h), use the following clause:

LIABILITY AND INSURANCE (DEC. 1991)

(a) The Contractor shall be—

(1) Liable to the Government for loss or damage to property, real and personal, owned by the Government or for which the Government is liable;

(2) Responsible for, and hold the Government harmless from, loss of or damage to property not included in paragraph (a)(1); and

(3) Responsible for, and hold the Government harmless from, bodily injury and death of persons, resulting either in whole or in part from the negligence or fault of the Contractor, its officers, agents, or employees in the performance of work under this contract.

(b) For the purpose of this clause, all cargo loaded or unloaded under this contract is

agreed to be property owned by the Government or property for which the Government is liable.

(1) The amount of the loss or damage as determined by the Contracting Officer will be withheld from payments otherwise due the Contractor.

(2) Determination of liability and responsibility by the Contracting Officer will constitute questions of fact within the meaning of the Disputes clause of this contract.

(c) The general liability and responsibility of the Contractor under this clause are subject only to the following specific limitations. The Contractor is not responsible to the Government for, and does not agree to hold the Government harmless from, loss or damage to property or bodily injury to or death of persons if—

(1) The unseaworthiness of the vessel, or failure or defect of the gear or equipment furnished by the Government, contributed jointly with the fault or negligence of the Contractor in causing such damage, injury, or death; and

(i) The Contractor, his officers, agents, and employees, by the exercise of due diligence, could not have discovered such unseaworthiness or defect of gear or equipment; or

(ii) Through the exercise of due diligence could not otherwise have avoided such damage, injury, or death.

(2) The damage, injury, or death resulted solely from an act or omission of the Government or its employees, or resulted solely from proper compliance by officers, agents, or employees of the Contractor with specific directions of the Contracting Officer.

(d) The Contractor shall at its own expense acquire and maintain insurance during the term of this contract, as follows—

(1) Standard workmen's compensation and employer's liability insurance and longshoremen's and harbor workers' compensation insurance, or such of these as may be proper under applicable state or Federal statutes.

(i) The Contractor may, with the prior approval of the Contracting Officer, be a self-insurer against the risk of this paragraph (d)(1).

(ii) This approval will be given upon receipt of satisfactory evidence that the Contractor has qualified as a self-insurer under applicable provision of law.

(2) Bodily injury liability insurance in an amount of not less than $300,000 on account of any one occurrence.

(3) Property damage liability insurance (which shall include any and all property, whether or not in the care, custody, or control of the Contractor) in an amount of not less than $300,000 for any one occurrence.

(e) Each policy shall provide, by appropriate endorsement or otherwise, that cancellation or material change in the policy shall not be effective until after a 30 day written notice is furnished the Contracting Officer.

(f) The Contractor shall furnish the Contracting Officer with satisfactory evidence of the insurance required in paragraph (d) before performance of any work under this contract.

(g) The Contractor shall, at its own cost and expense, defend any suits, demands, claims, or actions, in which the United States might be named as a co-defendant of the Contractor, resulting from the Contractor's performance of work under this contract. This requirement is without regard to whether such suit, demand, claim, or action was the result of the Contractor's negligence. The Government shall have the right to appear in such suit, participate in defense, and take such actions as may be necessary to protect the interest of the United States.

(h) It is expressly agreed that the provisions in paragraphs (d) through (g) of this clause shall not in any manner limit the liability or extend the liability of the Contractor as provided in paragraphs (a) through (c) of this clause.

(i) The Contractor shall—

(1) Equitably reimburse the Government if the Contractor is indemnified, reimbursed, or relieved of any loss or damage to Government property;

(2) Do nothing to prevent the Government's right to recover against third parties for any such loss or damage; and

(3) Furnish the Government, upon the request of the Contracting Officer, at the Government's expense, all reasonable assistance and cooperation in obtaining recovery, including the prosecution of suit and the execution of instruments of assignment in favor of the Government.

(End of clause)

252.247–7008 Evaluation of bids.

As prescribed in 247.271–4(a), use the following provision:

EVALUATION OF BIDS (DEC. 1991)

(a) The Government will evaluate bids on the basis of total aggregate price of all items within an area of performance under a given schedule.

(1) An offeror must bid on all items within a specified area of performance for a given schedule. Failure to do so shall be cause for rejection of the bid for that area of performance of that Schedule. If there is to be no charge for an item, an entry such as ''No Charge,'' or the letters ''N/C'' or ''0,'' must be made in the unit price column of the Schedule.

(2) Any bid which stipulates minimum charges or graduated prices for any or all

items shall be rejected for that area of performance within the Schedule.

(b) In addition to other factors, the Contracting Officer will evaluate bids on the basis of advantages or disadvantages to the Government that might result from making more than one award (multiple awards).

(1) In making this evaluation, the Contracting Officer will assume that the administrative cost to the Government for issuing and administering each contract awarded under this solicitation would be $500.

(2) Individual awards will be for the items and combinations of items which result in the lowest aggregate cost to the Government, including the administrative costs in paragraph (b)(1).

(c) When drayage is necessary for the accomplishment of any item in the bid schedule, the Offeror shall include in the unit price any costs for bridge or ferry tolls, road use charges or similar expenses.

(d) Unless otherwise provided in this solicitation, the Offeror shall state prices in amounts per hundred pounds on gross or net weights, whichever is applicable. All charges shall be subject to, and payable on, the basis of 100 pounds minimum weight for unaccompanied baggage and a 500 pound minimum weight for household goods, net or gross weight, whichever is applicable.

(End of provision)

ALTERNATE I (DEC. 1991)

As prescribed in 247.271–4(a), add the following paragraph (e) to the basic clause:

(e) Notwithstanding paragraph (a), when ''additional services'' are added to any schedule, such ''additional services'' items will not be considered in the evaluation of bids.

252.247–7009 Award.

As prescribed in 247.271–4(b), use the following provision:

AWARD (DEC. 1991)

(a) The Government shall make award by area to the qualified low bidder under each of the specified schedules to the extent of the bidder's stated guaranteed daily capability as provided in this solicitation and the Estimated Quantities Schedule.

(b) The Government reserves the right to make an award of two or more areas to a single bidder if such award will result in an overall lower estimated cost to the Government.

(c) The Government also reserves the right to award additional contracts, as a result of this solicitation, to the extent necessary to meet its estimated maximum daily requirements.

(End of provision)

252.247–7010 Scope of contract.

As prescribed in 247.271–4(d), use the following clause:

SCOPE OF CONTRACT (DEC. 1991)

(a) The Contractor shall furnish services and materials for the preparation of personal property (including servicing of appliances) for movement or storage, drayage and related services. Unless otherwise indicated in the Schedule, the Contractor shall—

(1) Furnish all materials except Government-owned containers (Federal Specification PPP–B–580), all equipment, plant and labor; and

(2) Perform all work in accomplishing containerization of personal property for overseas or domestic movement or storage, including—

(i) Stenciling;

(ii) Cooperage;

(iii) Drayage of personal property in connection with other services;

(iv) Decontainerization of inbound shipments of personal property; and

(v) The handling of shipments into and out of the Contractor's facility.

(b) Excluded from the scope of this contract is the furnishing of like services or materials which are provided incident to complete movement of personal property when purchased by the Through Government Bill of Lading or other method/mode of shipment or property to be moved under the Do-It-Yourself moving program or otherwise moved by the owner.

(End of clause)

252.247–7011 Period of contract.

As prescribed in 247.271–4(e), use the following clause:

PERIOD OF CONTRACT (DEC. 1991)

(a) This contract begins January 1, 19____, and ends December 31, 19____, both dates inclusive. Any work ordered before, and not completed by the expiration date shall be governed by the terms of this contract.

(b) The Government will not place new orders under this contract that require that performance commence more than 15 days after the expiration date.

(c) The Government may place orders required for the completion of services (for shipments in the Contractor's possession) for 180 days past the expiration date.

(End of clause)

252.247–7012 Ordering limitation.

As prescribed in 247.271–4(g), use the following clause:

ORDERING LIMITATION (DEC. 1991)

(a) The Government will place orders for items of supplies or services with the contractor awarded the initial contract to the extent of the contractor's guaranteed maximum daily capability. However, the contractor may accept an additional quantity in excess of its capability to accommodate a single order.

(b) Orders for additional requirements will be placed in a like manner with the next higher contractor to the extent of its guaranteed maximum daily capability. The Government will repeat this procedure until its total daily requirement is fulfilled.

(c) In the event the procedure in paragraphs (a) and (b) does not fulfill the Government's total daily requirement, the Government may offer additional orders under the contract to contractors without regard to their guaranteed maximum daily capability.

(End of clause)

252.247–7013 Contract areas of performance.

As prescribed in 247.271–4(h), use the following clause and complete paragraph (b) by defining each area of performance as required (see 247.271–2(b)):

CONTRACT AREAS OF PERFORMANCE (DEC. 1991)

(a) The Government will consider all areas of performance described in paragraph (b) as including the Contractor's facility, regardless of geographical location.

(b) The Contractor shall perform services within the following defined areas of performance, which include terminals identified therein: _____.

(End of clause)

252.247–7014 Demurrage.

As prescribed in 247.271–4(i), use the following clause:

DEMURRAGE (DEC. 1991)

The Contractor shall be liable for all demurrage, detention, or other charges as a result of its failure to load or unload trucks, freight cars, freight terminals, vessel piers, or warehouses within the free time allowed under applicable rules and tariffs.

(End of clause)

252.247–7015 Requirements.

As prescribed in 216.505(d), substitute the following paragraph (f) for paragraph (f) of the basic clause at FAR 52.216–21.

ALTERNATE I (DEC. 1991)

(f) Orders issued during the effective period of this contract and not completed within that time shall be completed by the Contractor within the time specified in the order. The rights and obligations of the Contractor and the Government for those orders shall be governed by the terms of this contract to the same extent as if completed during the effective period.

252.247–7016 Contractor liability for loss or damage.

As prescribed in 247.271–4(k), use the following clause:

CONTRACTOR LIABILITY FOR LOSS OR DAMAGE (DEC. 1991)

(a) Definitions.

As used in this clause—

Article means any shipping piece or package and its contents.

Schedule means the level of service for which specific types of traffic apply as described in DoD 4500.34–R, Personal Property Traffic Management Regulation.

(b) For shipments picked up under Schedule I, Outbound Services, or delivered under Schedule II, Inbound Services—

(1) If notified within one year after delivery that the owner has discovered loss or damage to the owner's property, the Contractor agrees to indemnify the Government for loss or damage to the property which arises from any cause while it is in the Contractor's possession. The Contractor's liability is—

(i) *Non-negligent damage.* For any cause, other than the Contractor's negligence, indemnification shall be at a rate not to exceed sixty cents per pound per article.

(ii) *Negligent damage.* When loss or damage is caused by the negligence of the Contractor, the liability is for the full cost of satisfactory repair or for the current replacement value of the article.

(2) The Contractor shall make prompt payment to the owner of the property for any loss or damage for which the Contractor is liable.

(3) In the absence of evidence or supporting documentation which places liability on a carrier or another contractor, the destination contractor shall be presumed to be liable for the loss or damage, if timely notified.

(c) For shipments picked up or delivered under Schedule III, Intra-City and Intra-Area—

(1) If notified of loss or damage within 75 days following delivery, the Contractor agrees to indemnify the Government for loss or damage to the owner's property.

(2) The Contractor's liability shall be for the full cost of satisfactory repair, or for the current replacement value of the article less depreciation, up to a maximum liability of $1.25 per pound times the net weight of the shipment.

(3) The Contractor has full salvage rights to damaged items which are not repairable and for which the Government has received compensation at replacement value.

(End of clause)

252.247–7017 Erroneous shipments.

As prescribed in 247.271–4(l), use the following clause:

ERRONEOUS SHIPMENTS (DEC. 1991)

(a) The Contractor shall—

(1) Forward to the rightful owner, articles of personal property inadvertently packed with goods of other than the rightful owner.

(2) Ensure that all shipments are stenciled correctly. When a shipment is sent to an incorrect address due to incorrect stenciling by the Contractor, the Contractor shall forward it to its rightful owner.

(3) Deliver to the designated air or surface terminal all pieces of a shipment, in one lot, at the same time. The Contractor shall forward to the owner any pieces of one lot not included in delivery, and remaining at its facility after departure of the original shipment.

(b) Forwarding under paragraph (a) shall be—

(1) With the least possible delay;

(2) By a mode of transportation selected by the Contracting Officer; and

(3) At the Contractor's expense.

(End of clause)

252.247–7018 Subcontracting.

As prescribed in 247.271–4(m), use the following clause:

SUBCONTRACTING (DEC. 1991)

The Contractor shall not subcontract without the prior written approval of the Contracting Officer. The facilities of any approved subcontractor shall meet the minimum standards required by this contract.

(End of clause)

252.247–7019 Drayage.

As prescribed in 247.271–4(n), use the following clause:

DRAYAGE (DEC. 1991)

(a) Drayage included for Schedule I, Outbound, applies in those instances when a shipment requires drayage to an air, water, or other terminal for onward movement after completion of shipment preparation by the Contractor. Drayage not included is when it is being moved from a residence or other pickup point to the Contractor's warehouse for onward movement by another freight company, carrier, etc.

(b) Drayage included for Schedule II, Inbound, applies in those instances when shipment is delivered, as ordered, from a destination Contractor's facility or other destination point to the final delivery point. Drayage not included is when shipment or partial removal of items from shipment is performed and prepared for member's pickup at destination delivery point.

(c) The Contractor will reposition empty Government containers—

(1) Within the area of performance;

(2) As directed by the Contracting Officer; and

(3) At no additional cost to the Government.

(End of clause)

252.247–7020 Additional services.

As prescribed in 247.271–4(o), use the following clause:

ADDITIONAL SERVICES (DEC. 1991)

The Contractor shall provide additional services not included in the schedule, but required for satisfactory completion of the services ordered under this contract, at a rate comparable to the rate for like services as contained in tenders on file with the Interstate Commerce Commission, state regulatory bodies, or the Military Traffic Management Command, in effect at time of order.

(End of clause)

252.247–7021 Returnable containers other than cylinders.

As prescribed in 247.305–70, use the following clause:

RETURNABLE CONTAINERS OTHER THAN CYLINDERS (MAY 1995)

(a) *Returnable container,* as used in this clause, includes reels, spools, drums, carboys, liquid petroleum gas containers, and

other returnable containers when the Contractor retains title to the container.

(b) Returnable containers shall remain the Contractor's property but shall be loaned without charge to the Government for a period of _____(insert number of days) calendar days after delivery to the f.o.b. point specified in the contract. Beginning with the first day after the loan period expires, to and including the day the containers are delivered to the Contractor (if the original delivery was f.o.b. origin) or are delivered or are made available for delivery to the Contractor's designated carrier (if the original delivery was f.o.b. destination), the Government shall pay the Contractor a rental of $_____ (insert dollar amount for rental) per container per day, computed separately for containers for each type, size, and capacity, and for each point of delivery named in the contract. No rental shall accrue to the Contractor in excess of the replacement value per container specified in paragraph (c) of this clause.

(c) For each container lost or damaged beyond repair while in the Government's possession, the Government shall pay to the Contractor the replacement value as follows, less the allocable rental paid for that container:

_____

(Insert the container types, sizes, capacities, and associated replacement values.)

These containers shall become Government property.

(d) If any lost container is located within _____ (insert number of days) calendar days after payment by the Government, it may be returned to the Contractor by the Government, and the Contractor shall pay to the Government the replacement value, less rental computed in accordance with paragraph (b) of this clause, beginning at the expiration of the loan period specified in paragraph (b) of this clause, and continuing to the date on which the container was delivered to the Contractor.

(End of clause)

[60 FR 29503, June 5, 1995]

252.247–7022 Representation of extent of transportation by sea.

As prescribed in 247.573(a), use the following provision:

REPRESENTATION OF EXTENT OF TRANSPORTATION BY SEA (AUG. 1992)

(a) The Offeror shall indicate by checking the appropriate blank in paragraph (b) of this provision whether transportation of supplies by sea is anticipated under the resultant contract. The term *supplies* is defined in the Transportation of Supplies by Sea clause of this solicitation.

(b) *Representation*. The Offeror represents that it—

_____ Does anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

_____ Does not anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

(c) Any contract resulting from this solicitation will include the Transportation of Supplies by Sea clause. If the Offeror represents that it will not use ocean transportation, the resulting contract will also include the Defense FAR Supplement clause at 252.247–7024, Notification of Transportation of Supplies by Sea.

(End of provision)

[56 FR 67222, Dec. 30, 1991, as amended at 57 FR 42633, Sept. 15, 1992]

252.247–7023 Transportation of supplies by sea.

As prescribed in 247.573(b), use the following clause:

TRANSPORTATION OF SUPPLIES BY SEA (NOV 1995T4)

(a) Definitions. As used in this clause—

(1) *Components* means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication, or assembly by the Contractor or any subcontractor.

(2) *Department of Defense* (DoD) means the Army, Navy, Air Force, Marine Corps, and defense agencies.

(3) *Foreign flag vessel* means any vessel that is not a U.S.-flag vessel.

(4) *Ocean transportation* means any transportation aboard a ship, vessel, boat, barge, or ferry through international waters.

(5) *Subcontractor* means a supplier, materialman, distributor, or vendor at any level below the prime contractor whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract. However, effective May 1, 1996, the term does not include a supplier, materialman, distributor, or vendor of commercial items or commercial components.

(6) *Supplies* means all property, except land and interests in land, that is clearly identifiable for eventual use by or owned by the DoD at the time of transportation by sea. (i) An item is clearly identifiable for eventual use by the DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

(ii) *Supplies* includes (but is not limited to) public works; buildings and facilities; ships; floating equipment and vessels of every character, type, and description, with parts, subassemblies, accessories, and equipment; machine tools; material; equipment; stores of all kinds; end items; construction materials; and components of the foregoing.

(7) *U.S.-flag vessel* means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b) The Contractor shall employ U.S.-flag vessels in the transportation by sea of any supplies to be furnished in the performance of this contract. The Contractor and its subcontractors may request that the Contracting Officer authorize shipment in foreign-flag vessels, or designate available U.S.-flag vessels, if the Contractor or a subcontractor believes that—

(1) U.S.-flag vessels are not available for timely shipment;

(2) The freight charges are inordinately excessive or unreasonable; or

(3) Freight charges are higher than charges to private persons for transportation of like goods.

(c) The Contractor must submit any request for use of other than U.S.-flag vessels in writing to the Contracting Officer at least 45 days prior to the sailing date necessary to meet its delivery schedules. The Contracting Officer will process requests submitted after such date(s) as expeditiously as possible, but the Contracting Officer's failure to grant approvals to meet the shipper's sailing date will not of itself constitute a compensable delay under this or any other clause of this contract. Requests shall contain at a minimum—

(1) Type, weight, and cube of cargo;

(2) Required shipping date;

(3) Special handling and discharge requirements;

(4) Loading and discharge points;

(5) Name of shipper and consignee;

(6) Prime contract number; and

(7) A documented description of efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of telephone notes, telegraphic and facsimile message or letters will be sufficient for this purpose.

(d) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information—

(1) Prime contract number;

(2) Name of vessel;

(3) Vessel flag of registry;

(4) Date of loading;

(5) Port of loading;

(6) Port of final discharge;

(7) Description of commodity;

(8) Gross weight in pounds and cubic feet if available;

(9) Total ocean freight in U.S. dollars; and

(10) Name of the steamship company.

(e) The Contractor agrees to provide with its final invoice under this contract a representation that to the best of its knowledge and belief—

(1) No ocean transportation was used in the performance of this contract;

(2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the contract;

(3) Ocean transportation was used, and the Contractor had the written consent of the Contracting Officer for all non-U.S.-flag ocean transportation; or

(4) Ocean transportation was used and some or all of the shipments were made on non-U.S.-flag vessels without the written consent of the Contracting Officer. The Contractor shall describe these shipments in the following format:

	Item Description	Contract Line Items	Quantity
Total.			

(f) If the final invoice does not include the required representation, the Government will reject and return it to the Contractor as an improper invoice for the purposes of the Prompt Payment clause of this contract. In the event there has been unauthorized use of non-U.S.-flag vessels in the performance of this contract, the Contracting Officer is entitled to equitably adjust the contract, based on the unauthorized use.

(g) The Contractor shall include this clause, including this paragraph (g) in all subcontracts under this contract, which exceed the simplified acquisition threshold in Part 13 of the Federal Acquisition Regulation.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 60 FR 61602, Nov. 30, 1995]

252.247–7024 Notification of transportation of supplies by sea.

As prescribed in 247.573(c), use the following clause:

NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA (NOV 1995)

(a) The Contractor has indicated by the response to the solicitation provision, Representation of Extent of Transportation by

Sea, that it did not anticipate transporting by sea any supplies. If, however, after the award of this contract, the Contractor learns that supplies, as defined in the Transportation of Supplies by Sea clause of this contract, will be transported by sea, the Contractor—

(1) Shall notify the Contracting Officer of that fact; and

(2) Hereby agrees to comply with all the terms and conditions of the Transportation of Supplies by Sea clause of this contract.

(b) The Contractor shall include this clause, including this paragraph (b), revised as necessary to reflect the relationship of the contracting parties, in all subcontracts hereunder, except (effective May 1, 1996) subcontracts for the acquisition of commercial items or components.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 60 FR 61603, Nov. 30, 1995]

252.247–7025 Reflagging or repair work.

As prescribed in 247.573(d), use the following clause:

REFLAGGING OR REPAIR WORK (MAY 1995)

(a) *Definition.*

Reflagging or repair work, as used in this clause, means work performed on a vessel—

(1) To enable the vessel to meet applicable standards to become a vessel of the United States; or

(2) To convert the vessel to a more useful military configuration.

(b) *Requirement.* Unless the Secretary of Defense waives this requirement, reflagging or repair work shall be performed in the United States or its territories, if the reflagging or repair work is performed—

(1) On a vessel for which the Contractor submitted an offer in response to the solicitation for this contract; and

(2) Prior to acceptance of the vessel by the Government.

(End of clause)

[60 FR 29503, June 5, 1995]

§ 252.248–7000 Preparation of value engineering change proposals.

As prescribed in 248.270, use the following clause:

PREPARATION OF VALUE ENGINEERING CHANGE PROPOSALS (MAY 1994)

Prepare value engineering change proposals, for submission pursuant to the value engineering clause of this contract, in the format prescribed by the version of MIL–STD–973 in effect on the date of contract award.

(End of clause)

[59 FR 27677, May 27, 1994]

252.249–7000 Special termination costs.

As prescribed in 249.501–70, use the following clause:

SPECIAL TERMINATION COSTS (DEC. 1991)

(a) Definition.— *Special termination costs,* as used in this clause, means only costs in the following categories as defined in part 31 of the Federal Acquisition Regulation (FAR)—

(1) Severance pay, as provided in FAR 31.205–6(g);

(2) Reasonable costs continuing after termination, as provided in FAR 31.205–42(b);

(3) Settlement of expenses, as provided in FAR 31.205–42(g);

(4) Costs of return of field service personnel from sites, as provided in FAR 31.205–35 and FAR 31.205–46(c); and

(5) Costs in paragraphs (a) (1), (2), (3), and (4) of this clause to which subcontractors may be entitled in the event of termination.

(b) Notwithstanding the Limitation of Cost/Limitation of Funds clause of this contract, the Contractor shall not include in its estimate of costs incurred or to be incurred, any amount for special termination costs to which the Contractor may be entitled in the event this contract is terminated for the convenience of the Government.

(c) The Contractor agrees to perform this contract in such a manner that the Contractor's claim for special termination costs will not exceed $_____. The Government shall have no obligation to pay the Contractor any amount for the special termination costs in excess of this amount.

(d) In the event of termination for the convenience of the Government, this clause shall not be construed as affecting the allowability of special termination costs in any manner other than limiting the maximum amount of the costs payable by the Government.

(e) This clause shall remain in full force and effect until this contract is fully funded.

(End of clause)

252.249–7001 [Reserved]

252.249–7002 Notification of anticipated contract termination or reduction.

As prescribed in 249.7003(c), use the following clause:

NOTIFICATION OF ANTICIPATED CONTRACT TERMINATION OR REDUCTION(DEC 1996)

(a) *Definitions.*

Major defense program means a program that is carried out to produce or acquire a major system (as defined in 10 U.S.C. 2302(5)) (see also DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs).

Substantial reduction means a reduction of 25 percent or more in the total dollar value of funds obligated by the contract.

(b) Section 1372 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103–160) and Section 824 of the National Defense Authorization Act for Fiscal Year 1997 (Pub. L. 104–201) are intended to help establish benefit eligibility under the Job Training Partnership Act (29 U.S.C. 1661 and 1662) for employees of DoD contractors and subcontractors adversely affected by contract terminations or substantial reductions under major defense programs.

(c) *Notice to employees and state and local officials.* Within 2 weeks after the Contracting Officer notifies the Contractor that contract funding will be terminated or substantially reduced, the Contractor shall provide notice of such anticipated termination or reduction to—

(1) Each employee representative of the Contractor's employees whose work is directly related to the defense contract; or

(2) If there is no such representative, each such employee;

(3) The State dislocated worker unit or office described in section 311(b)(2) of the Job Training Partnership Act (29 U.S.C. 1661(b)(2)); and

(4) The chief elected official of the unit of general local government within which the adverse effect may occur.

(d) *Notice to subcontractors.* Not later than 60 days after the Contractor receives the Contracting Officer's notice of the anticipated termination or reduction, the Contractor shall—

(1) Provide notice of the anticipated termination or reduction to each first-tier subcontractor with a subcontract of $500,000 or more; and

(2) Require that each such subcontractor—

(i) Provide notice to each of its subcontractors with a subcontract of $100,000 or more; and

(ii) Impose a similar notice and flowdown requirement to subcontractors with subcontracts of $100,000 or more.

(e) The notice provided an employee under paragraph (c) of this clause shall have the same effect as a notice of termination to the employee for the purposes of determining whether such employee is eligible for training, adjustment assistance, and employment services under section 325 or 325A of the Job Training Partnership Act (29 U.S.C. 1662d, 1662d-1). If the Contractor has specified that the anticipated contract termination or reduction is not likely to result in plant closure or mass layoff, as defined in 29 U.S.C. 2101, the employee shall be eligible only for services under section 314(b) and paragraphs (1) through (14), (16), and (18) of section 314(c) of the Job Training Partnership Act (29 U.S.C. 1661c(b) and paragraphs (1) through (14), (16), and (18) of section 1661c(c)).

(End of clause)

[61 FR 64637, Dec. 6, 1996]

252.251–7000 Ordering from Government supply sources.

As prescribed in 251.107, use the following clause:

ORDERING FROM GOVERNMENT SUPPLY SOURCES (MAY 1995)

(a) When placing orders under Federal Supply Schedules or Personal Property Rehabilitation Price Schedules, the Contractor shall follow the terms of the applicable schedule and authorization. Include in each order:

(1) A copy of the authorization (unless a copy was previously furnished to the Federal Supply Schedule or Personal Property Rehabilitation Price Schedule contractor).

(2) The following statement: This order is placed under written authorization from _____ dated _____.

In the event of any inconsistency between the terms and conditions of this order and those of your Federal Supply Schedule contract or Personal Property Rehabilitation Price Schedule contract, the latter will govern.

(3) The completed address(es) to which the Contractor's mail, freight, and billing documents are to be directed.

(b) If a Federal Supply Schedule contractor refuses to honor an order placed by a Government contractor under an agency authorization, the Contractor shall report the circumstances to the General Services Administration, FFN, Washington, DC 20406, with a copy to the authorizing office.

(c) When placing orders under nonmandatory schedule contracts and requirements contracts, issued by the General Services Administration (GSA) Office of Information Resources Management, for automated data processing equipment, software and maintenance, communications equipment and supplies, and teleprocessing services, the Contractor shall follow the terms of the applicable contract and the procedures in paragraph (a) of this clause.

(d) When placing orders for Government stock, the Contractor shall—

(1) Comply with the requirements of the Contracting Officer's authorization, using FEDSTRIP or MILSTRIP procedures, as appropriate;

(2) Use only the GSA Form 1948–A, Retail Services Shopping Plate, when ordering from GSA Self-Service Stores;

(3) Order only those items required in the performance of Government contracts; and

(4) Pay invoices from Government supply sources promptly. For purchases made from DoD supply sources, this means within 30 days of the date of a proper invoice (see also Defense Federal Acquisition Regulation Supplement (DFARS) 251.105). For purposes of computing interest for late Contractor payments, the Government's invoice is deemed to be a demand for payment in accordance with the Interest clause of this contract. The Contractor's failure to pay may also result in the DoD supply source refusing to honor the requisition (see DFARS 251.102(f)) or in the Contracting Officer terminating the Contractor's authorization to use DoD supply sources. In the event the Contracting Officer decides to terminate the authorization due to the Contractor's failure to pay in a timely manner, the Contracting Officer shall provide the Contractor with prompt written notice of the intent to terminate the authorization and the basis for such action. The Contractor shall have 10 days after receipt of the Government's notice in which to provide additional information as to why the authorization should not be terminated. Such termination shall not provide the Contractor with an excusable delay for failure to perform or complete the contract in accordance with the terms of the contract, and the Contractor shall be solely responsible for any increased costs.

(e) Only the Contractor may request authorization for subcontractor use of Government supply sources. The Contracting Officer will not grant authorizations for subcontractor use without approval of the Contractor.

(f) Government invoices shall be submitted to the Contractor's billing address, and Contractor payments shall be sent to the Government remittance address specified below:

Contractor's Billing Address (include point of contact and telephone number):

Government Remittance Address (include point of contact and telephone number):

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 60 FR 29503, June 5, 1995]

252.251–7001 Use of Interagency Fleet Management System (IFMS) vehicles and related services.

As prescribed in 251.205, use the following clause:

USE OF INTERAGENCY FLEET MANAGEMENT SYSTEM (IFMS) VEHICLES AND RELATED SERVICES (DEC. 1991)

(a) The Contractor, if authorized use of IFMS vehicles, shall submit requests for five or fewer vehicles and related services in writing to the appropriate General Services Administration (GSA) Regional Customer Service Bureau, Attention: Motor Equipment Activity. Submit requests for more than five vehicles to GSA headquarters: General Services Administration, FTM, Washington, DC 20406. Include the following in each request:

(1) Two copies of the agency authorization to obtain vehicles and related services from GSA.

(2) The number of vehicles and related services required and the period of use.

(3) A list of the Contractor's employees authorized to request vehicles and related services.

(4) A list of the makes, models, and serial numbers of Contractor-owned or leased equipment authorized to be serviced.

(5) Billing instructions and address.

(b) The Contractor should make requests for any unusual quantities of vehicles as far in advance as possible.

(c) The Contractor shall establish and enforce suitable penalties for employees who use or authorize the use of Government vehicles for other than performance of Government contracts.

(d) The Contractor shall assume, without the right of reimbursement from the Government, the cost or expense of any use of IFMS vehicles and services not related to the performance of the contract.

(e) Only the Contractor may request authorization for subcontractor use of IFMS vehicles. The Contracting Officer will not grant authorization for subcontractor use without approval of the Contractor.

(End of clause)

PART 253—FORMS

Sec.

Subpart 253.2—Prescription of Forms

253.204 Administrative matters.
253.204–70 DD Form 350, Individual Contracting Action Report.
253.204–71 DD Form 1057, Monthly Contracting Summary of Actions $25,000 or Less.

253.208 Required sources of supplies and services.
253.208–1 DD Form 448, Military Interdepartmental Purchase Request.
253.208–2 DD Form 448–2, Acceptance of MIPR.
253.209 Contractor qualifications.
253.209–1 Responsible prospective contractors.
253.213 Small purchase and other simplified purchase procedures (SF's 18, 30, 44, 1165, OF's 347, 348).
253.213–70 Instructions for completion of DD Form 1155.
253.215 Contracting by negotiation.
253.215–70 DD Form 1547, Record of Weighted Guidelines Application.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36554, July 31, 1991, unless otherwise noted.

Subpart 253.2—Prescription of Forms

253.204 Administrative matters.

253.204–70 DD Form 350, Individual Contracting Action Report.

Policy on use of a DD Form 350 is in 204.670–2. This subsection 253.204–70 contains instructions for completion of Parts A through F of the DD Form 350. Paragraph (g) of this subsection contains special instructions for completing a DD Form 350 for an action of $25,000 or less under the Small Business Competitiveness Demonstration Program.

(a) *Part A of the DD Form 350.* Part A identifies the report and the reporting activity. Complete all four blocks.

(1) BLOCK A1, TYPE OF REPORT. Enter one of the following codes:

(i) *Codes 0—Original.* Enter code 0 unless code 1 or code 2 applies.

(ii) *Code 1—Cancelling.* A cancelling action cancels an existing DD Form 350 in accordance with departmental data collection point instructions.

(iii) *Code 2—Correcting.* A correcting action corrects an existing DD Form 350 action in accordance with departmental data collection point instructions.

(2) BLOCK A2, REPORT NO. Enter the four-digit local control number (see 204.670–3(a)(4)). If Block A1 is coded 1 or 2, use the prior report number rather than a new one.

(3) BLOCK A3, CONTRACTING OFFICE CODE. Enter the code assigned the contracting office by the departmental data collection point in 204.670–1(c).

(4) BLOCK A4, NAME OF CONTRACTING OFFICE. Enter sufficient detail to establish the identity of the contracting office.

(b) *Part B of the DD Form 350.* Part B identifies the transaction.

(1) BLOCK B1, CONTRACT IDENTIFICATION INFORMATION. Do not leave any parts of Block B1 blank.

(i) BLOCK B1A, CONTRACT NUMBER.

(A) Enter—

(1) The DoD contract number; or

(2) For orders under contracts awarded by other Federal agencies, the contract number of that Federal agency as it appears in the contractual instrument.

(B) Do not leave spaces between characters, and do not enter dashes, slants, or any other punctuation marks.

(C) The DoD contract number is the basic (13 alphanumeric character) procurement instrument identification number (PIIN) that was assigned in accordance with 204.7001 or constructed under an exception permitted by 204.7000. Do not enter any supplemental procurement instrument identification numbers as part of the contract number (these go in Block B2).

(ii) BLOCK B1B, ORIGIN OF CONTRACT. Enter the code that indicates the agency that originated/assigned the contract number.

(A) *Code A—DoD.*

(B) *Code B—NASA.*

(C) *Code C—Other non-DoD agency.*

(2) BLOCK B2, MODIFICATION, ORDER OR OTHER ID NUMBER. Enter the supplementary procurement instrument identification number (if there is one) that was assigned in accordance with 204.7004 or as permitted by 204.7000. It can be up to 19 characters. Usually calls and orders have a four-position number (see 204.7004–4) and modifications (including modifications of calls or orders) have a six-position modification number (see 204.7003 or 204.7004(b)).

(3) BLOCK B3, ACTION DATE.

(i) Enter the year, month, and day of the effective date for fiscal obligation

purposes. When contract actions are awarded contingent on the availability of funds, enter the date funds are obligated.

(ii) Enter four digits for the year, two digits for the month, and two digits for the day. Use 01 through 12 for January through December. For example, enter January 2, 2003, as 20030102.

(4) BLOCK B4, COMPLETION DATE.

(i) Enter year, month, and day of the last contract delivery date or the end of the performance period. If the contract is incrementally funded, report the completion date for the entire contract. Report the completion date associated with an option quantity when the option is exercised.

(ii) Enter four digits for the year, two digits for the month, and two digits for the day. Use 01 through 12 for January through December. For example, enter January 2, 2003, as 20030102.

(5) BLOCK B5, CONTRACTOR IDENTIFICATION INFORMATION.

(i) Use data that relates to the contractor whose name and address appears in the contract document (Block 7 of the SF 26, Award/Contract; Block 8 of the SF 30, Amendment of Solicitation/Modification of Contract; Block 15A of the SF 33, Solicitation, Offer and Award; or Block 9 of the DD Form 1155, Order for Supplies or Services), except—

(A) For contracts placed with the Small Business Administration under Section 8(a) of the Small Business Act, use data that relates to the company that will be performing the work.

(B) For Federal schedule orders, use data that applies to the contractor whose name appears on the schedule (not the data for the agent to whom orders may be sent).

(C) For contracts with the Canadian Commercial Corporation (CCC), use data for the appropriate CCC office.

(ii) Some of the parts of Block B5 may not apply to the action being reported. Follow the instructions for each part.

(A) BLOCK B5A, CONTRACTOR IDENTIFICATION NUMBER. Enter the contractor's 9-position Data Universal Numbering System (DUNS) number (see FAR 4.602(d) and 4.603).

(B) BLOCK B5B, GOVERNMENT AGENCY. Enter one of the following codes:

(1) Code Y—Yes. Enter code Y when the contractor is a Federal/State/Local government agency.

(2) *Code N—No.* Enter code N when code Y does not apply.

(C) BLOCK B5C, CAGE CODE. Enter the 5-position commercial and Government entity (CAGE) code that identifies the contractor plant or establishment. If the CAGE code is not already available in the contracting office and the apparent awardee does not respond to the provision at 252.204–7001, Commercial and Government Entity (CAGE) Code Reporting, use the procedures at 204.7202–1 to obtain one.

(D) BLOCK B5D, CONTRACTOR NAME AND DIVISION NAME. Enter the contractor's name as stated in the offer and resultant contract. Include its division name.

(E) BLOCK B5E, CONTRACTOR ADDRESS. Enter the contractor's address as stated in the offer and resultant contract. Include street address (and/or P.O. Box), city/town, state/country, and ZIP code, if applicable. Do not enter foreign postal codes.

(F) BLOCK B5F, TIN. Enter the contractor's taxpayer identification number (see FAR subpart 4.9). Leave Block B5F blank if the contractor is—

(1) A nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the trade or business in the United States; and does not have an office or place of business or a fiscal paying agent in the United States;

(2) An agency or instrumentality of a foreign government

(3) An agency or instrumentality of a Federal, State, or local government.

(G) BLOCK B5G, PARENT TIN. Enter the contractor's parent company (common parent) TIN (see FAR subpart 4.9 and 52.204–3). If the contractor does not have a parent company or the parent company meets the exemption for Block B5F, leave Block B5G blank.

(H) BLOCK B5H, PARENT NAME. If a parent company TIN is entered in Block B5G, enter in Block B5H the name of the parent company (common parent). Leave Block B5H blank if

there is no parent company or the parent company is exempted from the requirement to have a TIN.

(6) BLOCK B6, PRINCIPAL PLACE OF PERFORMANCE.

(i) The place, or places, where the contract will be performed may be specified by the Government or listed by the contractor in response to the solicitation provision at FAR 52.214–14, Place of Performance—Sealed Bidding, or FAR 52.215–20, Place of Performance. Use data for the contractor's principal place of performance, which is generally the—

(A) Final assembly point for supply contracts with manufacturers.

(B) Dealer's location for supply contracts with regular dealers (FAR 22.601) where shipment is made from stock.

(C) Subcontractor's location for supply contracts with regular dealers (FAR 22.601) where shipment is made from a subcontractor's plant.

(D) Actual construction site for construction contracts.

(E) Planned construction site for architect-engineer contracts.

(F) Place of mining for mined supplies.

(G) Place (including military installations) where a service is performed for service contracts.

(ii) When there is more than one location for any of paragraphs (i) (A) through (G) (e.g., more than one construction site), use the location involving the largest dollar amount of the acquisition. Do not show more than one location in Block B6.

(iii) If places of performance are too varied or not known, or if commercial procedures were used, enter the contractor's home office location.

(iv) Follow the instructions for each part of Block 6 which applies to the action being reported.

(A) BLOCK B6A, CITY OR PLACE CODE.

(1) For places in the United States and outlying areas, enter the numeric place code, which can be found in the Federal Information Processing Standards (FIPS) Publication (PUB) 55–2, (''Guideline: Codes for named Populated Places, Primary Country Divisions, and Other Locational Entities of the United States and Outlying Areas''). Leave Block B6A blank for places outside the United States and outlying areas.

(2) If the city or locality is not listed, look in FIPS PUB 55–2 for the county code of the principal place of performance. Enter that in Block B6A. Use 50000 for Washington, DC, with a State code of 11.

(3) Paragraph 5.2, Entry Selection With the Aid of the Class Code, of FIPS PUB 55–2 will help in selecting the correct code. Sometimes, a class code should be used in addition to a place code to accurately identify the place of performance. Do not use place codes when the first position of the class code is X or Z.

(B) BLOCK B6B, STATE OR COUNTRY CODE.

(1) For places in the United States and outlying areas, enter the numeric State code, which can be found in FIPS PUB 55–2 or FIPS PUB 5–2, Codes for the Identification of the States, the District of Columbia and the Outlying Areas of the United States and Associated Areas.

(2) For places outside the United States and outlying areas, enter the alpha country code from FIPS PUB 10–3, Countries, Dependencies, Areas of Special Sovereignty, and Their Principal Administrative Divisions.

(C) BLOCK B6C, CITY OR PLACE AND STATE OR COUNTRY NAME. Enter the name of the principal place of performance. Do not leave Block B6C blank.

(7) BLOCK B7, TYPE OBLIGATION. Enter one of the following codes:

(i) *Code 1—Obligation*. Enter code 1 if the contracting action obligates funds.

(ii) *Code 2—Deobligation*. Enter code 2 if the contracting action deobligates funds.

(8) BLOCK B8, TOTAL DOLLARS. Enter the net amount of funds (whole dollars only) obligated or deobligated by the contracting action. Do not leave Block B8 blank.

(9) BLOCK B9, FOREIGN MILITARY SALE. Enter one of the following codes. If only part of the contracting action is a foreign military sale, separately report the parts (see 204.670–6(c)).

(i) *Code Y—Yes*. Enter code Y when the contracting action is under a foreign military sales arrangement, or

under any other arrangement when a foreign country or international organization is bearing the cost of the acquisition.

(ii) *Code N—No.* Enter code N when code Y does not apply.

(10) BLOCK B10, MULTIYEAR CONTRACT. Enter one of the following codes:

(i) *Code Y—Yes.* Enter code Y when the contracting action is a multiyear contract as defined at FAR 17.103. Do not report contracts containing options as multiyear unless the definition at FAR 17.103 applies to the contract.

(ii) *Code N—No.* Enter code N when code Y does not apply.

(11) BLOCK B11, TOTAL MULTIYEAR VALUE. Enter total multiyear value only at the time of initial obligation of the multiyear funds. Therefore, enter the estimated total multiyear contract value (whole dollars only) if the contracting action is—

(i) A multiyear contract (B10 is coded Y); and

(ii) Either a new letter contract or a new definitive contract (Block B13A is coded 1 or 3 and Block B13D is blank). For all other codes in Block B13A, enter a numeric value of zero in Block B11.

(12) BLOCK B12, PRINCIPAL PRODUCT OR SERVICE. Block B12 contains five parts. Do not leave any parts of Block B12 blank.

(i) BLOCK B12A, FSC OR SVC CODE. Enter the 4-character federal supply classification (FSC) or service code that describes the contract effort. To find the code, look in Section I of the Department of Defense (DoD) Procurement Coding Manual (MN02). There are three categories of codes to choose from. In some cases, use a 4-character code from a list of 4-character codes; in other cases, construct a code using the instructions in the Manual. If more than one category or code applies to the contracting action, enter the one that best identifies the product or service representing the largest dollar value.

(A) *Supplies.* If the contracting action is for the purchase (not lease or rental) of supplies, enter an FSC code in Block B12A. FSC codes are all numeric. Look in Section I, Part C, of the DoD Procurement Coding Manual (MN02). The Department of Defense Federal Supply Classification Cataloging Handbooks H2–1, H2–2, and H2–3 may also help with the correct 4-digit code.

(B) *Services.* If the contracting action is for services (except research, development, test, and evaluation), construction, or lease or rental of equipment or facilities, enter a service code in Block B12A.

(C) *Research, Development, Test and Evaluation (RDT&E).* If the contracting action is for RDT&E (as defined in FAR 35.001 and 235.001), enter an RDT&E code in Block B12A. Look in Section I, Part A, of the DoD Procurement Coding Manual (MN02). All RDT&E codes should begin with the letter ''A''. Do not use an RDT&E code for—

(1) Purchase, lease, or rental of equipment, supplies, or services separately purchased in support of RDT&E work, even if RDT&E funds are cited. Instead, use an FSC or Service code under the instructions in paragraphs (i) (A) or (B).

(2) Orders under Federal Schedule contracts. Instead, use an FSC or Service code under the instructions in paragraphs (i) (A) or (B).

(ii) BLOCK B12B, DOD CLAIMANT PROGRAM CODE. Enter a code that identifies the commodity described in Block B12E. These codes are in Section III of the DoD Procurement Coding Manual (MN02). If more than one code applies to the contracting action, enter the one that best identifies the product or service representing the largest dollar value. If the description in Block B12E is for—

(A) Research and development (R&D), enter the code that best represents the objective of the R&D. For example, if the objective of the research and development is a guided missile, enter code A20. If the R&D cannot be identified to any particular objective, enter code S10.

(B) Ship repair, inspect and repair as necessary (IRAN), modification of aircraft, overhaul of engines, or similar maintenance, repair or modification services, enter the code that best identifies the program.

(C) Equipment rental (including rental of automated data processing equipment), enter code S10.

(D) Utility services, enter code S10.

(E) Services that cannot be identified to any listed program, enter code S10.

(F) Supplies or equipment that cannot be identified to any listed program, enter code C9E.

(iii) BLOCK B12C PROGRAM, SYSTEM OR EQUIPMENT CODE.

(A) Enter a code that describes the program, weapons system or equipment. These codes are in Section II of the DoD Procurement Coding Manual (MN02). If there is no code that applies to the contracting action, enter three zeros. If more than one code applies to the action, enter the one that best identifies the product or service representing the largest dollar value.

(B) If the contracting action is funded by the Ballistic Missile Defense Organization, enter code CAA.

(C) If the contracting action supports environmental cleanup programs, enter one of the codes listed in Section II of the DoD Procurement Coding Manual (MN02) under the heading ''Description and Use of Program Codes—Environmental Cleanup Programs.''

(D) Defense Logistics Agency activities must use the code assigned by the sponsoring service.

(iv) BLOCK B12D, SIC CODE.

Enter the standard industrial classification (SIC) code for the acquisition (as opposed to the SIC of the manufacturer or dealer). Use the SIC code in effect at the time of award. These codes are in the OMB Standard Industrial Classification Manual. If more than one code applies to the contracting action, enter the one that best identifies the product or service representing the largest dollar value.

(v) BLOCK B12E, NAME/DESCRIPTION. Enter the name or brief description of the commodity or service. If the description is classified, enter only the work ''Classified.'' Do not, however, use ''Classified'' when a code name (e.g., Minuteman, Polaris, Trident, Pershing, etc.) or an identifying program number (e.g., WS–107A) can be used.

(13) BLOCK B13, KIND OF CONTRACTING ACTION. Some of the parts of Block B13 may not apply to the action being reported. Follow instructions for each part. When the contracting action is a modification, complete Blocks B13A and B13D.

(i) BLOCK B13A, CONTRACT/ORDER. Enter one of the following codes:

(A) *Code 1—Letter Contract.* Enter code 1 when the contracting action is a letter contract. When the contracting action is a modification to a letter contract that has not been definitized, enter code 1 in B13A.

(B) *Code 3—Definitive Contract.* Enter code 3 when the contracting action is the award of a definitive contract. When the contracting action definitizes a letter contract or is a modification to a definitive contract, enter code 3 in B13A. Code 3 includes the following:

(1) Definitive contract awards under the Small Business Administration 8(a) program.

(2) Notices of award.

(3) Lease agreements.

(4) Indefinite delivery-definite quantity contracts (FAR 52.216–20).

(5) Indefinite delivery-indefinite quantity contracts (FAR 52.216–22) when funds are obligated by the contract itself.

Code 3 excludes orders from the Procurement List (see codes 6 and 8).

(C) *Code 4—Order under an Agreement.* Enter code 4 when the contracting action is an order or definitization of an order under an agreement other than a blanket purchase agreement. Examples include an order exceeding $25,000 under a basic ordering agreement or a master ship repair agreement and a job order when the contract is created by issuing the order. A call under a blanket purchase agreement associated with a Federal Supply Schedule, pursuant to FAR 13.202(c)(3), is coded 6. A call under other blanket purchase agreements, pursuant to FAR subpart 13.2, is coded 9. When the contracting action is a modification to an order described in code 4 instructions, enter code 4 in B13A.

(D) *Code 5—Order under Indefinite Delivery Contract (IDC).* Enter code 5 when the contracting action is an order, including task or delivery order, under an indefinite delivery contract awarded by a Federal agency. For example, code 5 is to be entered for an order under a GSA indefinite delivery contract such as a GSA area-wide contract for utility services, which is not a Federal schedule. When the contracting action is a modification to an order described in

code 5 instructions, enter code 5 in B13A.

(E) *Code 6—Order/Call under Federal Schedule.* Enter code 6 if the contracting action is a blanket purchase agreement call established with a Federal schedule contractor pursuant to FAR 13.202(c)(3), or an order under a—

(*1*) Federal schedule (e.g., GSA, VA, or OPM) contract (FAR 8.401); or

(*2*) GSA ADP schedule contract. Code 6 includes orders from the Procurement List under Federal schedules. When the contracting action is a modification to an order/call described in code 6 instructions, enter code 6 in B13A.

(F) *Code 8—Order from Procurement List.* Enter code 8 if the contracting action is an action placed with Federal Prison Industries (UNICOR) or a JWOD Participating Nonprofit Agency in accordance with FAR subpart 8.6 or 8.7. When the contracting action is a modification to an action described in code 8 instructions, enter code 8 in B13A.

(G) *Code 9—Purchase Order/Call.* Enter code 9 if the contracting action, including an action in a designated industry group under the Small Business Competitiveness Demonstration Program (FAR subpart 19.10), is an award pursuant to FAR part 13, except when the contracting action is a blanket purchase agreement call pursuant to FAR 13.202(c)(3) (see code 6). When the contracting action is a modification to a purchase order/call described in code 9 instructions, enter code 9 in B13A.

(ii) BLOCK B13B, TYPE OF INDEFINITE DELIVERY CONTRACT. If Block B13A is coded 3 and the ninth position of B1A is coded D, complete Block B13B. If Block B13A is coded 5, complete Block B13B. Otherwise, leave blank.

(A) *Code A—Requirements Contract (FAR 52.216–21).*

(B) *Code B—Indefinite Quantity Contract (FAR 52.216–22).*

(C) *Code C—Definite Quantity Contract (FAR 52.216–20).*

(iii) BLOCK B13C, MULTIPLE/SINGLE AWARD IDC(S). If Block B13B is coded A, B, or C, complete Block B13C. Otherwise, leave blank.

(A) *Code M—Multiple Award.* Enter code M if the contracting action is a task or delivery order under a multiple award indefinite delivery contract.

(B) *Code S—Single Award.* Enter code S if the contracting action is a task or delivery order under a single award indefinite delivery contract.

(iv) BLOCK B13D, MODIFICATION. If this action is a modification, enter one of the following codes. Otherwise, leave blank.

(A) *Code A—Additional Work (new agreement). Enter code A when the contracting action is a bilateral supplemental agreement which obligates funds for additional work requiring a justification and approval (J&A).*

(B) *Code B—Additional Work (other). Enter code B when the contracting action is a modification of an existing contract (including a letter contract) which is not covered by code A or by codes C through H. (See code H for exercise of an option.) Code B includes actions which—*

(*1*) Initiate an incremental yearly buy under a multiyear contract;

(*2*) Amend a letter or other contract to add work that does not require a J&A; or

(*3*) Order under a priced exhibit or production list.

(C) *Code C—Funding Action.* Enter code C when the contracting action is a modification (to a letter or other contract) for the sole purpose of obligating or deobligating funds. This includes—

(1) Incremental funding (other than incremental yearly buys under multiyear contracts, which are coded B);

(2) Changes to the estimated cost on cost-reimbursement contracts;

(3) Repricing actions covering incentive price revisions;

(4) Economic price adjustments; and

(5) Initial citation and obligation of funds for a contract awarded in one fiscal year but not effective until a subsequent fiscal year.

(D) *Code D—Change Order.* Enter code D if the contracting action is a change order issued under the ''Changes,'' ''Differing Site Conditions,'' or similar clauses in existing contracts.

(E) *Code E—Termination for Default.* Enter code E if the contracting action is a modification which terminates all or part of the contract for default.

(F) *Code F—Termination for Convenience.* Enter code F if the contracting

action is a modification which terminates all or part of the contract for convenience.

(G) *Code G—Cancellation.* Enter code G if the contracting action is a modification which cancels the contract. Do not use code G to cancel a prior DD Form 350—see Block A1.

(H) *Code H—Exercise of an Option.* Enter code H if the contracting action is an exercise of an option.

(I) *Code J—Definitization of a Letter Contract.* Enter code J if the contracting action is the definitization of a letter contract.

(14) BLOCK B14, CICA APPLICABILITY. Enter one of the following codes;

(i) *Code A—Pre-CICA.* Enter code A if the action resulted from a solicitation issued before April 1, 1985. Modifications within the original scope of work of such awards and orders under pre-CICA indefinite delivery type contracts are reported as pre-CICA. In case of modifications issued on or after April 1, 1985, coded A in B13 or B13D, as appropriate, CICA is applicable to the modification, and these actions shall be coded B in Block B14.

(ii) *Code B—CICA Applicable.* Enter code B if the action resulted from a solicitation issued on or after April 1, 1985, and none of the following codes applies.

(iii) *Code C—Simplified Acquisition Procedures Other than FAR subpart 13.6.* Enter code C if the action resulted from use of the procedures in FAR part 13, other than those in subpart 13.6.

(iv) *Code D—Simplified Procedures Pursuant to FAR subpart 13.6.* Enter code D if the action resulted from use of the procedures in FAR subpart 13.6.

(c) *Part C of the DD Form 350.*

(1) Part C gathers data concerning contracting procedures, use of competition, financing, and statutory requirements other than socioeconomic (which are in Part D).

(2) Do not complete Part C if the contracting action is an action with a government agency, i.e., Block B5B (Government Agency) is coded Y (Yes). If Block B13A is coded 6, do not complete any blocks in Part C except Block C3, and Blocks C13A and C13B when they apply.

(3) In completing Part C, the codes to be used describe either the contracting action being reported or the original contract, depending on the codes reported in blocks B13A and B13D.

(i) If Block B13A is coded 1, 2, 3, 4, 6, or 9 and Block B13D is coded A or is blank, code the blocks in Part C with reference to the action being reported. Otherwise, code the blocks with reference to the original contract.

(ii) If there are no codes for the original contract because a DD Form 350 was not required at the time, the original action is no longer available, the definition of the original code has changed, or a data element has been added to the system after the original contract report, then use codes that best describe the original contracting action.

(4) Complete Part C blocks as follows:

(i) BLOCK C1, SYSNOPSIS. Enter one of the following codes:

(A) *Code A—Synopsis Only.* Enter code A if only a synopsis of the proposed action was prepared and transmitted to the Commerce Business Daily in accordance with FAR subpart 5.2.

(B) *Code B—Combined Synopsis/Solicitation.* Enter code B if a combined synopsis/solicitation of the proposed action was prepared and transmitted to the Commerce Business Daily in accordance with FAR subpart 5.2 and 12.603.

(C) *Code N—No.* Enter code N if a synopsis was not prepared.

(ii) BLOCK C2, REASON NOT SYNOPSIZED. Enter one of the following codes if Block C1 is coded N. Otherwise, leave Block C2 blank.

(A) *Code A—Urgency.* Enter code A if the action was not synopsized due to urgency (see FAR 6.302–2).

(B) *Code B—Use of FACNET.* Enter code B if the action was not synopsized due to use of FACNET for the acquisition.

(C) *Code Z—Other Reason.* Enter code Z if the action was not synopsized due to some other reason.

(iii) BLOCK C3, EXTENT COMPETED. Enter one of the following codes:

(A) *Code A—Competed Action.* Enter code A when—

(1) The contracting action is an action under a Federal Schedule contract (Block B13A is coded 6).

(2) Competitive procedures were used to fulfill the requirement for full and open competition (FAR subpart 6.1).

(3) Full and open competition procedures after exclusion of sources were used in order to establish/maintain alternative sources, to set aside an acquisition for small business, or to compete section 8(a) awards (FAR subpart 6.2).

(4) Statutory authorities for other than full and open competition were used (FAR subpart 6.3) and more than one offer was received (if only one offer was received, use code D).

(5) Contracting action resulted from a contract awarded prior to the Competition in Contracting Act that used two-step sealed bidding or other sealed bidding, or that was negotiated competitively.

(6) Simplified acquisition procedures were used and competition was obtained.

(B) *Code B—Not Available for Competition.* Enter code B for—

(1) Awards for utilities or utility systems, excluding long distance telecommunications services, when only one supplier can furnish the service (FAR 6.302–1(b)(3)).

(2) Brand name commercial products for authorized resale.

(3) Acquisitions authorized or required by statute to be awarded to a specific source pursuant to FAR 6.302–5(b) (2) or (4), e.g., qualified nonprofit agencies employing people who are blind or severely disabled (FAR subpart 8.7) or 8(a) program (FAR subpart 19.8).

(4) International agreements and Foreign Military Sales when the acquisition is to be reimbursed by a foreign country that requires that the product or services be obtained from a particular firm as specified in official written direction such as a Letter of Offer and Acceptance.

(5) Other contract actions when the Director of Defense Procurement has determined that there is no opportunity for competition.Q P='04'≤

(Note: Even though Part C is not completed for actions with a government agency, the database will automatically include these actions in the category of not available for competition.)

(C) *Code C—Follow-on to Competed Action.* Enter code C when the action pertains to an acquisition placed with a particular contractor to continue or augment a specific competed program when such placement was necessitated by prior acquisition decisions.

(D) *Code D—Not Competed.* Enter code D when codes A, B, or C do not apply.

(iv) BLOCK C4, SEA TRANSPORTATION. Enter one of the following codes when Block B1B is coded A, Block B5B is coded N, and Block B13A is coded other than 9. Otherwise, leave Block C4 blank.

(A) *Code Y—Yes—Positive Response to 252.247–7022 or 252.212–7000(c)(2).* Enter code Y when the contractor's response to the provision at 252.247–7022, Representation of Extent of Transportation by Sea, or 252.212–7000(c)(2), Offeror Representations and Certifications—Commercial Items, indicates that the contractor anticipates that some of the supplies being provided may be transported by sea.

(B) *Code N—No—Negative Response to 252.247–7022 or 252.212–7000(c)(2).* Enter code N when the contractor's response to the provision at 252.247–7022 or 252.212–7000(c)(2) indicates that the contractor anticipates that none of the supplies being provided will be transported by sea.

(C) *Code U—Unknown—No Response or Provision Not Included in*

Solicitation. Enter code U when the contractor did not complete the representation at 252.247–7022 or 252.212–7000(c)(2) or the solicitation did not include either provision.

(v) BLOCK C5, TYPE OF CONTRACT.

(A) If the action is a letter contract, including modifications and amendments to letter contracts, enter the code that describes the anticipated type of contract the letter contract will become when it is definitized.

(B) If there is more than one type of contract involved in the contracting action, enter the code that matches the type with the most dollars. If the type with the least dollars exceeds $500,000, fill out separate DD Forms 350 (with different report numbers) for each type.

(C) Enter one of the following codes:

(1) Code A—Fixed-Price Redetermination.

(2) Code J—Firm-Fixed-Price.

(3) Code K—Fixed-Price Economic Price Adjustment.

(4) Code L—Fixed-Price Incentive.

(5) Code R—Cost-Plus-Award-Fee.

(6) Code S—Cost Contract.

(7) Code T—Cost-Sharing.

(8) Code U—Cost-Plus-Fixed-Fee.

(9) Code V—Cost-Plus-Incentive-Fee.

(10) Code Y—Time-and-Materials.

(11) Code Z—Labor-Hour.

(vi) BLOCK C6, NUMBER OF OFFERORS SOLICITED.

(A) Leave Block C6 blank if—

(1) The original contract resulted from a solicitation issued before April 1, 1985, (i.e., before the effective date of the Competition in Contracting Act);

(2) Block B1B is coded B or C and Block B13A is coded 5; or

(3) Block B13A is coded 6.

(B) Otherwise, enter—

(1) Code 1—One. Enter code 1 if only one offeror was solicited.

(2) Code 2—More than One. Enter code 2 if more than one offeror was solicited.

(vii) BLOCK C7, NUMBER OF OFFERS RECEIVED.

(A) Leave Block C7 blank if—

(1) The original contract resulted from a solicitation issued before April 1, 1985 (i.e., before the effective date of the Competition in Contracting Act); or

(2) Block B13A is coded 6, Order Under Federal Schedule.

(B) Otherwise, enter the specific number of offers received (maximum 999).

(viii) BLOCK C8, SOLICITATION PROCEDURES.

(A) Leave Block C8 blank if—

(1) The original contract resulted from a solicitation issued before April 1, 1985 (i.e., before the effective date of the Competition in Contracting Act);

(2) The action is pursuant to simplified acquisition procedures (Block B13A is coded 9); or

(3) The action is an order/call under a Federal schedule (Block B13A is coded 6.

(B) Otherwise, enter one of the following codes:

(1) Code A—Full and Open Competition—Sealed Bid. Enter code A if the action resulted from an award pursuant to FAR 6.102(a).

(2) Code B—Full and Open Competition—Competitive Proposal. Enter code B if the action resulted from an award pursuant to FAR 6.102(b).

(3) Code C—Full and Open Competition—Combination. Enter code C if the action resulted from an award using a combination of competitive procedures (e.g., two-step sealed bidding) pursuant to FAR 6.102(c).

(4) Code D—Architect-Engineer. Enter code D if the action resulted from selection of sources for architect-engineer contracts pursuant to FAR 6.102(d)(1).

(5) Code E—Basic Research. Enter code E if the action resulted from competitive selection of basic research proposals pursuant to FAR 6.102(d)(2).

(6) Code F—Multiple Award Schedule. Enter code F is the action is an award of a multiple award schedule pursuant to FAR 6.102(d)(3) or an order against such a schedule.

(7) Code G—Alternative Sources. Enter code G if the action resulted from use of competitive procedures but excluded a particular source pursuant to FAR 6.202(a).

(8) Code K—Set-Aside. Enter code K if the action resulted from any—

(i) Set-aside for small business concerns (see FAR 6.203) including small business innovation research (SBIR) actions and awards to qualified nonprofit agencies employing people who are blind or severely disabled which were participating in a set-aside for small business concerns (see FAR 19.501(h)).

(ii) Set-aside for small disadvantaged business concerns (see 206.203).

(iii) Total or partial set-asides (including portions of broad agency announcements (BAAs)) for historically black colleges and universities or minority institutions (see 206.203 and 235.016).

(iv) Competition among section 8(a) firms under FAR 19.805 (report noncompetitive 8(a) awards as code N).

(9) Code M. [Reserved]

(10) Code N—Other Than Full and Open Competition. Enter code N if the action resulted from use of other than full and open competition pursuant to FAR subpart 6.3. This includes awards to qualified nonprofit agencies employing people who are blind or severely disabled (see FAR subpart 8.7) or noncompetitive

awards to the Small Business Administration under Section 8(a) of the Small Business Act (see FAR 6.302–5(b)).

(ix) BLOCK C9, AUTHORITY FOR OTHER THAN FULL AND OPEN COMPETITION.

(A) Leave Block C9 blank if the original contract resulted from a solicitation issued before April 1, 1985 (i.e., before the effective date of the Competition in Contracting Act).

(B) Enter one of the following codes if Block C8 is coded ''N.'' Otherwise, leave Block C9 blank.

(1) Code 1A—Unique Source. Enter code 1A if the action was justified pursuant to FAR 6.302–1(b)(1).

(2) Code 1B—Follow-on Contract. Enter code 1B if the action was justified pursuant to FAR 6.302–1(a)(2) (ii) or (iii).

(3) Code 1C—Unsolicited Research Prop. Enter code 1C if the action was justified pursuant to FAR 6.302–1(a)(2)(i).

(4) Code 1D—Patent/Data Rights. Enter code 1D if the action was justified pursuant to FAR 6.302–1(b)(2).

(5) Code 1E—Utilities. Enter code 1E if the action was justified pursuant to FAR 6.302–1(b)(3).

(6) Code 1F—Standardization. Enter code 1F if the action was justified pursuant to FAR 6.302–1(b)(4).

(7) Code 1G—Only One Source—Other. Enter code 1G if the action was justified pursuant to FAR 6.302–1 in a situation other than the examples cited in codes 1A through 1F.

(8) Code 2A—Urgency. Enter code 2A if the action was justified pursuant to FAR 6.302–2.

(9) Code 3A—Particular Source. Enter Code 3A if the action was justified pursuant to FAR 6.302–3(a)(2).

(10) Code 4A—International Agreement. Enter code 4A if the action was justified pursuant to FAR 6.302–4.

(11) Code 5A—Authorized by Statute. Enter code 5A if the action was justified pursuant to FAR 6.302–5(a)(2)(i).

(12) Code 5B—Authorized Resale. Enter code 5B if the action was justified pursuant to FAR 6.302–5(a)(2)(ii).

(13) Code 6A—National Security. Enter code 6A if the action was justified pursuant to FAR 6.302–6.

(14) Code 7A—Public Interest. Enter code 7A if the action was taken pursuant to FAR 6.302–7.

(x) BLOCK C10, SUBJECT TO LABOR STANDARDS STATUTES. Enter one of the following codes. When Block B13A is coded 6, leave Block C10 blank.

(A) *Code A—Walsh-Healey Act.* Enter code A when the contracting action is subject to the provisions of FAR subpart 22.6.

(B) *Code C—Service Contract Act.* Enter code C when the contracting action is subject to the provisions of the Service Contract Act (see FAR part 37).

(C) *Code D—Davis-Bacon Act.* Enter code D when the contracting action is subject to the Davis-Bacon Act (see FAR 22.403–1).

(D) *Code Z—Not Applicable.* Enter code Z when codes A, C, or D do not apply.

(xi) BLOCK C11, CERTIFIED COST OR PRICING DATA. Enter one of the following codes when Block B1B is coded A. Otherwise, leave blank.

(A) *Code Y—Yes—Obtained.* Enter code Y when cost or pricing data were obtained (see FAR 15.804–2) and certified in accordance with FAR 15.804–4.

(B) *Code N—No—Not Obtained.* Enter code N when neither code Y nor code W applies.

(C) *Code W—Not Obtained—Waived.* Enter code W when cost or pricing data were not obtained because the requirement was waived (see FAR 15.804–1(a)(3) and 215.804–1(b)(4)).

(xii) BLOCK C12, CONTRACT FINANCING. Enter one of the following codes identifying whether or not progress payments (PP), advance payments (AP), or other financing methods were used.

(A) *Code A—FAR 52.232–16.* Enter code A if the contract contains the clause at FAR 52.232–16, Progress Payments.

(B) *Code B—DFARS 252.232–7003.* Enter code B if the contract contains the clause at 252.232–7003, Flexible Progress Payments.

(C) *Code C—Percentage of Completion PP.* Enter code C if the contract provides for progress payments based on percentage or stage of completion, which is only permitted on contracts for construction, for shipbuilding, or for ship conversion, alteration, or repair (see 232.102(e)(2)).

(D) *Code D—Unusual PP or AP.* Enter code D if the contract provides for unusual progress payments or advance

payments (see FAR subpart 32.4 and 32.501–2).

(E) *Code E—Commercial Financing.* Enter code E if the contract provides for commercial financing payments (see FAR subpart 32.2).

(F) *Code F—Performance-Based Financing.* Enter code F if the contract provides for performance-based financing payments (see FAR subpart 32.10).

(G) *Code Z—Not Applicable.* Enter code Z when codes A through F do not apply.

(xiii) BLOCK C13, FOREIGN TRADE DATA.

(A) The term ''United States'' (U.S.), as used in Block C13, excludes the Trust Territory of Palau (see 204.670–1 for definition of United States and outlying areas).

(B) BLOCK C13A, PLACE OF MANUFACTURE. Complete Block C13A only if the contracting action is for a foreign end product or a service provided by a foreign concern. Otherwise, leave Block C13A blank.

(1) Code A—U.S. Enter code A if the contracting action is for—

(i) A foreign end product that is manufactured in the United States but still determined to be foreign because 50 percent or more of the cost of its components is not mined, produced, or manufactured inside the United States or inside qualifying countries; or

(ii) Services performed in the United States by a foreign concern.

(2) Code B—Foreign. Enter code B if the contracting action is for—

(i) Any other foreign end product; or

(ii) Services performed outside the Unites States by a foreign concern.

(C) BLOCK C13B, COUNTRY OF ORIGIN CODE.

(1) Complete Block C13B only if Block C13A is coded A or B. Otherwise, leave Block C13B blank.

(2) Enter the code from FIPS PUB 10–3 (Countries, Dependencies, Areas of Special Sovereignty, and Their Principal Administrative Divisions) that identifies the country where the foreign product is coming from or where the foreign company providing the services is located. If more than one foreign country is involved, enter the code of the foreign country with the largest dollar value.

(xiv) BLOCK C14, COMMERCIAL ITEMS. Enter one of the following codes:

(A) *Code Y—Yes.* Enter code Y if the contract contains the clause at FAR 52.212–4, Contract Terms and Conditions—Commercial Items.

(B) *Code N—No.* Enter code N if code Y does not apply

(d) *Part D of the DD Form 350.*

(1) Part D gathers data on the various socioeconomic programs that apply to defense acquisitions.

(2) Do Not complete Part D if the contracting action is an—

(i) Order/call under a Federal schedule, i.e., Block B13A is coded 6; or

(ii) Action with a government agency, i.e., Block B5B is coded Y.

(3) Determined the status of the concern (e.g., size and ownership) by referring to FAR part 19 and DFARS part 219.

(4) Use the codes in Blocks B13A and B13D to determine whether the codes in Part D will describes the contracting action being reported or the original contract.

(i) Code Part D to describe the contracting action being reported when—

(A) Block B13A is coded 1, 3, 4, or 9 and Block B13D is coded A or is blank; or

(B) Block B5B is coded N, Block B13A is coded 8, and Block B13D is coded A or is blank. Otherwise, code Part D to describe the original contract.

(ii) If there are no codes for the original contract because a DD Form 350 was not required at the time, the original action is no longer available, the definition of the original code has changed or a data element has been added to the system after the original contract report, then use codes that best describe the original contracting action.

(5) Complete Part D blocks as follows:

(i) BLOCK D1, TYPE OF BUSINESS. Enter one of the following codes:

(A) *Code A—Small Disadvantaged Business Performing in U.S.* Enter code A if the contractor is an SDB concern as defined in 219.001 and the place of performance is within the United States and outlying areas.

(B) *Code B—Other Small Business Performing in U.S.* Enter code B if the contractor is a small business concern as defined in FAR 19.001, other than a small disadvantaged business concern, and the place of performance is within the United States and outlying areas.

(C) *Code C—Large Business Performing in U.S.* Enter code C if the contractor is a domestic large business concern, and the place of performance is within the United States and outlying areas.

(D) *Code D—JWOD Participating Nonprofit Agencies.* Enter code D if the contractor is a qualified nonprofit agency employing people who are blind or severely disabled (FAR 8.701), and the place of performance is within the United States and outlying areas.

(E) *Code F—Hospital.* Enter code F if the contractor is a hospital, and the place of performance is within the United States and outlying areas.

(F) *Code L—Foreign Concern/Entity.* Enter code L if the contractor is a foreign concern, the Canadian Commercial Corporation, or a non-U.S.-chartered nonprofit institution.

(G) *Code M—Domestic Firm Performing Outside U.S.* Enter code M if the contractor is a domestic concern or a domestic nonprofit institution and the place of performance is outside the United States and outlying areas.

(H) *Code U—Historically Black Colleges and Universities or Minority Institutions (HBCU/MI).* Enter code U if the contractor is an HBCU/MI as defined at 252.226–7000 and the place of performance is within the United States and outlying areas.

(I) *Code V—Other Educational.* Enter code V if the contractor is an educational institution which does not qualify as an HBCU/MI, and the place of performance is within the United States and outlying areas.

(J) *Code Z—Other Nonprofit.* Enter code Z if the contractor is a nonprofit institution (defined in FAR 31.701) which does not meet any of the criteria in codes D, F, U, or V, and the place of performance is within the United States and outlying areas.

(ii) BLOCK D2, REASON NOT AWARDED TO SMALL DISADVANTAGED BUSINESS (SDB). Enter one of the following codes when Block D1 is coded B or C. Otherwise, leave Block D2 blank.

(A) *Code A—No Known SDB Source.*

(B) *Code B—SDB Not Solicited.* Enter code B when there was a known SDB source, but it was not solicited.

(C) *Code C—SDB Solicited/No Offer.* Enter code C when an SDB was solicited but it did not submit an offer or its offer was not sufficient to cover the total quantity requirement so it received a separate award for the quantity offered.

(D) *Code D—SDB Solicited/Offer Not Low.* Enter code D when an SDB offer was not the low offer or an SDB was not willing to accept award of a partial small business set-aside portion of an action at the price offered.

(E) *Code Z—Other Reason.* Enter code Z when an SDB did not receive the award for any other reason or when Block B1B is coded B or C and Block B13A is coded 5.

(iii) BLOCK D3, REASON NOT AWARDED TO SMALL BUSINESS (SB). Enter one of the following codes when Block D1 is coded C. Otherwise, leave D3 blank. (The term ''Small Business'' includes small disadvantaged businesses.)

(A) *Code A—No Known SB Source.*

(B) *Code B—SB Not Solicited.* Enter code B when there was a known small business source, but it was not solicited.

(C) *Code C—SB Solicited/No Offer.* Enter code C when a small business concern was solicited but it did not submit an offer or its offer was not sufficient to cover the total quantity requirement so it received a separate award for the quantity offered.

(D) *Code D—SB Solicited/Offer Not Low.* Enter code D when a small business offer was not the low or most advantageous offer or a small business concern was not willing to accept award of a set-aside portion of an action at the price offered by the Government.

(E) *Code Z—Other Reason.* Enter code Z when a small business did not receive the award for any other reason or when Block B1B is coded B or C and Block B13A is coded 5.

(iv) BLOCK D4, PREFERENCE PROGRAM.

(A) BLOCK D4A, TYPE OF SB SET-ASIDE. Enter one of the following codes:

(1) Code A—None. Enter code A if there was no small business set-aside (FAR 19.502). Note that set-asides for historically black colleges and universities and minority institutions (HBCUs/MIs) are not small business set-asides. Use code A for HBCU/MI set-asides and complete Block D4C.

(2) Code B—Total SB Set-Aside. Enter code B if the action was a total set-aside for small business (FAR 19.502–2), including actions reserved exclusively for small business concerns pursuant to FAR 13.105, or if the action resulted from the Small Business Innovation Research Program.

(3) Code C—Partial SB Set-Aside. Enter code C if the action was a partial set-aside for small business (219.502–3).

(4) Code E—Total SDB Set-Aside. Enter code E if the action was a total set-aside for small disadvantaged businesses (219.502–2–70).

(5) Code Y—Emerging Small Business Set-Aside. Enter code Y if the action was an emerging small business set-aside within a designated industry group under the Small Business Competitiveness Demonstration Program (FAR subpart 19.10 and DFARS 204.670–9).

(B) BLOCK D4B—TYPE OF SDB SET-ASIDE/SDB PREFERENCE. Enter one of the following codes, even if Block D4A is coded E:

(1) Code A—None. Enter code A if no SDB preference was given or award was not to an SDB.

(2) Code B—Section 8(a). Enter code B if the contract was awarded to the Small Business Administration (SBA) under Section 8(a) of the Small Business Act (FAR subpart 19.8).

(3) Code C—Total SDB Set-Aside. Enter code C if the action was an SDB set-aside (219.502–2–70) and award was to an SDB.

(4) Code D—SDB Evaluation Preference—Unrestricted. Enter code D if the action was unrestricted but an SDB received an award as a result of an evaluation preference (subpart 219.70).

(5) Code E—SDB Preferential Consideration—Partial SB Set-Aside. Enter code E if the action was a partial set-aside for small business and preferential consideration resulted in an award to an SDB (219.502–3).

(6) Code F—SDB Evaluation Preference in Construction. Enter code F if the action was a construction acquisition and preferential consideration resulted in an award to a SDB (subpart 219.72). If code F applies and Block B13D is blank, complete Blocks E1 and E3.

(C) BLOCK D4C—HBCU/MI SET-ASIDE. Enter one of the following codes:

(1) Code A—None. Enter code A if the action was not set aside for HBCUs or MIs.

(2) Code B—HBCU or MI—Total Set-Aside. Enter code B if the action was total set-aside for HBCUs and MIs (226.7003).

(3) Code C—HBCU or MI—Partial Set-Aside. Enter code C if the action was a partial set-aside for HBCUs or MIs under a broad agency announcement (235.016).

(D) BLOCK D4D. [Reserved]

(E) BLOCK D4E, PREMIUM PERCENT.

(1) Complete Block D4E if Block B1B is coded A and—

(i) Block D4B is coded C, D, or E; or

(ii) Block D4C is coded B or C. Otherwise, leave blank.

(2) Calculate the premium percentage per 219.202–5 and enter it as a three-digit number rounded to the nearest tenth, e.g., enter 7.55% as 076. If no premium was paid, enter three zeros (000).

(v) BLOCK D5—ETHNIC GROUP.

(A) Complete Block D5 if the action is with an SDB. Otherwise, leave it blank.

(B) Enter the code from the following list which corresponds to the ethnic group marked by the contractor in the solicitation provision at 252.219–7000 (Small Disadvantaged Business Concern Representation (DoD Contracts)).

(1) Code A—Asian-Indian American.

(2) Code B—Asian-Pacific American.

(3) Code C—Black American.

(4) Code D—Hispanic American.

(5) Code E—Native American.

(6) Code F—Other SDB certified/determined by SBA.

(7) Code Z—No representation.

(vi) BLOCK D6, WOMEN-OWNED BUSINESS. Enter one of the following codes:

(A) *Code Y—Yes.* Enter code Y if the response to FAR 52.204–5 or 52.212–3(c) (Women-Owned Business Representation) indicates that it is a women-owned business.

(B) *Code N—No.* Enter code N if the contractor's response to FAR 52.204–5 or 52.212–3(c) indicates that it is not a women-owned business.

(C) *Code U—Uncertified.* Enter code U if the information is not available because the contractor did not complete the representation under FAR 52.204–5 or 52.212–3(c).

(vii) BLOCK D7—SMALL BUSINESS INNOVATION RESEARCH (SBIR) PROGRAM. Enter one of the following codes. When Block B1B is coded B or C and Block B13A is coded 5, leave Block D7 blank.

(A) *Code A—Not a SBIR Program Phase I/II/III.* Enter Code A if the action is not in support of a Phase I, II, or III SBIR program.

(B) *Code B—SBIR Program Phase I Action.* Enter code B if the action is related to a Phase I contract in support of the SBIR Program.

(C) *Code C—SBIR Program Phase II Action.* Enter code C if the action is related to a Phase II contract in support of the SBIR Program.

(D) *Code D—SBIR Program Phase III Action.* Enter code D if the action is related to a Phase III contract in support of the SBIR Program.

(viii) BLOCK D8, SUBCONTRACTING PLAN—SB, SDB, OR HBCU/MI. Enter one of the following codes:

(A) *Code A—Plan Not Included—No Subcontracting Possibilities.* Enter code A if a subcontracting plan was not included in the contract because subcontracting possibilities do not exist (FAR 19.705–2(c)).

(B) *Code B—Plan Not Required.* Enter code B if no subcontracting plan was required (because the action did not meet the dollar thresholds in FAR 19.702(b)).

(C) *Code C—Plan Required, Incentive Not Included.* Enter code C if the action includes a subcontracting plan, but does not include additional incentives (FAR 19.708(c)).

(D) *Code D—Plan Required, Incentive Included.* Enter code D if the action includes a subcontracting plan and also includes additional incentives (FAR 19.708(c), 219.708(c)).

(ix) BLOCK D9, DEMONSTRATION TEST PROGRAM. Enter one of the following codes. When Block B13A is coded 5 or Block B13D is coded B, C, D, E, F, or G and the original action was awarded before the program began, enter code N in Block D9. When Block B1B is coded B or C and Block B13A is coded 5, enter code N in Block D9.

(A) *Code Y—Yes.* Enter code Y if this is an action with a U.S. business concern, in either the four designated industry groups or the ten targeted industry categories under the Small Business Competitiveness Demonstration Program (FAR subpart 19.10 and DFARS subpart 219.10), where the principal place of performance is in the United States or outlying areas.

(B) *Code N—No.* Enter code N if code Y does not apply.

(x) BLOCK D10, SIZE OF SMALL BUSINESS.

(A) Complete Block D10 only when Block D9 is coded ''Y'' and the contractor is a small business (Block D1 is coded A or B). Otherwise, leave Block D10 blank.

(B) Enter one of the following codes for the size of the business (number of employees or average annual gross revenue) as represented by the contractor in the solicitation provision at FAR 52.219–19, Small Business Concern Representation for the Small Business Competiveness Demonstration Program:

(1) Code A—50 or fewer.
(2) Code B—51–100.
(3) Code C—101–250.
(4) Code D—251–500.
(5) Code E—501–750.
(6) Code F—751–1,000.
(7) Code G—Over 1,000.
(8) Code M—$1,000,000 or less.
(9) Code N—$1,000,001–2,000,000.
(10) Code P—$2,000,001–3,500,000.
(11) Code R—$3,500,001–5,000,000.
(12) Code S—$5,000,001–10,000,000.
(13) Code T—$10,000,001–17,000,000.
(14) Code U—Over $17,000,000.

(xi) BLOCK D11, EMERGING SMALL BUSINESS.

(A) Complete this block only if Block D9 is coded ''Y'' and the contracting action is in one of the four designated

industry groups, not one of the targeted industry categories. Otherwise, leave Block D11 blank.

(B) Enter one of the following codes:

(1) Code Y—Yes. Enter code Y if the contractor represents in the provision at FAR 52.219–19, Small Business Concern Representation for the Small Business Competitiveness Demonstration Program, that it is an emerging small business concern.

(2) Code N—No. Enter code N if code Y does not apply.

(e) *Part E of the DD Form 350.* Part E gathers data on specialized items that may not become permanent reporting elements.

(1) BLOCK E1, PREFERENCE AWARD VALUE.

(i) Complete Block E1 if code F was entered in Block D4B and Block B13D is blank. Otherwise, leave Block E1 blank.

(ii) Enter the dollar amount (i.e., contract face value) of the award. Use whole dollars.

(2) BLOCK E2, SET-ASIDE VALUE.

(i) Complete Block E2 only if the contracting action is with a qualified nonprofit agency employing people who are blind or severely disabled and was awarded as a result of the agency's participation in a total or partial small business set-aside (FAR 19.501(h)). Otherwise, leave Block E2 blank.

(ii) Enter the dollar amount (i.e., contract face value) of the set-aside portion of the award. Use whole dollars.

(3) BLOCK E3, NEXT LOW OFFER.

(i) Complete Block E3 only if Block E1 or E2 is completed. Otherwise, leave Block E3 blank.

(ii) If Block E1 or E2 is completed—

(A) Enter the offered price from the small business firm that would have been the low offeror if qualified nonprofit agencies employing people who are blind or severely disabled had not participated in the acquisition; or

(B) If the evaluation preference for small disadvantaged business concerns in construction acquisitions set forth in subpart 219.72 is applied, enter the offered price from the non-SDB concern that would have been the successful offeror if the evaluation preference had not been applied. Enter the amount in whole dollars.

(4) Block E4—CONTINGENCY OPERATION. Enter code Y in Block E4 if the contracting action is in support of a contingency operation, as defined in 213.101, and the action exceeds the simplified acquisition threshold for contingency operations (see 213.000). Otherwise, leave Block E4 blank.

(5) BLOCK E5—BLOCK E8—RESERVED.

(f) *Part F of the DD Form 350.* Part F identifies the reporting official.

(1) BLOCK F1, NAME OF CONTRACTING OFFICER OR REPRESENTATIVE. Enter the name (Last, First, Middle Initial) of the contracting officer or representive.

(2) BLOCK F2, SIGNATURE. The person identified in Block F1 must sign.

(3) BLOCK F3, TELEPHONE NUMBER. Enter the telephone number (with area code) for the individual in Block F1. Installations with Defense Switched Network (DSN) must enter the DSN number.

(4) BLOCK F4, DATE. Enter date that the DD Form 350 Report is submitted. Enter four digits for the year, two digits for the month, and two digits for the day. Use 01 through 12 for January through December. For example, enter January 2, 2003, as 20030102.

(g) *Special Instructions for DD Forms 350 on Actions of $25,000 or Less Under the Small Business Competitiveness Demonstration Program.*

(1) A DD Form 350 is required on actions of $25,000 or less under the Small Business Competitiveness Demonstration Program in accordance with 204.670–9.

(2) Except as provided in paragraphs (g)(2)(i) and (ii) of this subsection, complete the DD Form 350 using the instructions in paragraphs (a) through (f) of this subsection.

(i) Enter code B in Block C3 for actions at or below the micro-purchase threshold at FAR 2.101.

(ii) Leave the following blocks blank:

BIB
B4
B5B
B5C
B5F
B5G
B5H
B9
B10

B11
B12B
B12C
C1
C2
C4
C6
C11
C12
C13A
C13B
D2
D3
D4E
D5
D7
D8
E2
E3

[61 FR 51032, Sept. 30, 1996, as amended at 62 FR 34135, June 24, 1997; 62 FR 44222, Aug. 20, 1997; 62 FR 48182, Sept. 15, 1997; 62 FR 49304, Sept. 19, 1997]

253.204–71 DD Form 1057, Monthly Contracting Summary of Actions $25,000 or Less.

(a) *Scope of subsection*. Policy on use of a DD Form 1057 is in 204.670. This subsection contains instructions on completion of the DD Form 1057.

(1) Report actions in the month they are awarded, issued, executed, or placed, except—

(i) When the price of an order or call cannot be determined when it is placed, count the action and its dollars when it is paid.

(ii) Count the following actions when the voucher is paid (count each voucher as one action):

(A) Meals and lodging.

(B) Automatic deliveries, e.g., bread, milk, and ice cream.

(iii) The Navy Facilities Engineering Command shall report vouchers it processes on Naval shore establishment contracts for electricity and gas in accordance with departmental procedures.

(2) Enter all dollar amounts in whole dollars only. Do not enter cents. If the net amount is a decrease, enter a minus sign (-) immediately preceding the amount to indicate a credit entry. Do not enter parentheses.

(3) Report actions of $25,000 or less in support of a contingency operation in accordance with the instructions in paragraphs (c) through (j) of this subsection. Report actions exceeding $25,000 but not exceeding $200,000 in support of a contingency operation (see 213.000) on the monthly DD Form 1057 as follows:

(i) Section B; the applicable lines are 5, 5a, 7, and 7a.

(ii) Section C; the applicable lines are 1 and 1c, 2 and 2c, and 3 and 3c.

(iii) Sections D, E, and F, are not applicable.

(iv) Section G; complete fully.

(b) *Definitions.* For purposes of this subsection—

All Other Orders means orders, and modifications of such orders, under basic ordering agreements (BOAs) or indefinite delivery contracts.

GSA Schedule Orders means only orders/calls, and modifications of such orders/calls, under Federal schedules awarded by GSA.

Other Contracting Actions means all actions that do not meet the definitions, in this paragraph (b), of an order.

Other Federal Schedule Orders means only orders, and modifications of such orders, under Federal schedules awarded by an agency other than GSA, e.g., awarded by VA or OPM.

Similified Acquisition Procedures means purchase orders, calls under blanket purchase agreements (BPAs) (except BPAs written under Federal schedules), and modifications to those actions.

(c) *Section A, General Information.*

(1) BLOCK A1, REPORT FOR MONTH ENDING. Enter the last day of the month in which the report is submitted. Enter four digits for the year, two digits for the month, and two digits for the day. Use 01 through 12 for January through December. For example, enter January 31, 2003, as 20030131.

(2) BLOCK A2, CONTRACTING OFFICE. Enter sufficient detail to establish the identity of the contracting office submitting the report in Blocks 2a and b.

(3) BLOCK A3, REPORTING OFFICE CODE. Enter the code assigned to the contracting office by the departmental data collection point in 204.670–8.

(d) *Section B, Contracting Actions.*

(1) BLOCK B1, TARIFF OR REGULATED ACQUISITIONS. Enter the number and dollar value of contracting actions (including modifications that

will also be reported in Block B8) with tariff or regulated industries (industries with sole source and service rates which are fixed or adjusted by a Federal, State, or other public regulatory body).

(2) BLOCK B2, FOREIGN/INTER-AGENCY.

(i) Enter the total number and dollar value of contracting actions (including modifications that will also be reported in Block B8)—

(A) For foreign military sales (FMS) or other arrangement where the foreign government or international organization is paying all or part of the cost of the action.

(B) Placed directly with foreign governments under the terms of an international agreement, e.g., base maintenance performed with the foreign government acting as the contractor (any other actions directly with foreign governments go in Block B5).

(C) With another Federal agency or Government corporation, e.g., Federal Prison Industries (UNICOR).

(ii) Enter the subtotals in Blocks B2a, b, and c for the number and dollar value of contracting actions, including modifications that will also be reported in Block B8 for—

(A) Block B2a, FMS/International Agreements. Enter subtotals for paragraphs (d)(2)(i)(A) and (B) of this subsection.

(B) Block B2b, Action with UNICOR. Enter subtotal for contracting actions with UNICOR.

(C) Block B2c, Action with Other Government Agency. Enter subtotal for action with government agencies other than UNICOR.

(3) BLOCK B3, SMALL BUSINESS.

(i) Enter the total number and total dollar value of contracting actions (including modifications which will also be reported in Block B8) where the—

(A) Contractor is a small business concern; and

(B) Place of performance is in the United States and outlying areas (see 204.670–1).

(ii) Enter the subtotals for the number and dollar value of contracting actions (including modifications that will also be reported in Block B8) for—

(A) Block B3a, Simplified Acquisition Procedures (SAP).

(B) Block B3b, GSA Schedule Orders.

(C) Block B3c, Other Federal Schedule Orders.

(D) Block B3d, All Other Orders.

(E) Block B3e, Other Contracting Actions.

(4) BLOCK B4, LARGE BUSINESS.

(i) Enter the total number and dollar value of contracting actions (including modifications which will also be reported in Block B8) where the—

(A) Contractor is a large business concern; and

(B) Place of performance is in the United States and outlying areas.

(ii) Enter the subtotals for the number and dollar value of contracting actions (including modifications that will also be reported in Block B8) for—

(A) Block B4a, Simplified Acquisition Procedures (SAP).

(B) Block B4b, GSA Schedule Orders.

(C) Block B4c, Other Federal Schedule Orders.

(D) Block B4d, All Other Orders.

(E) Block B4e, Other Contracting Actions.

(5) BLOCK B5, DOMESTIC OR FOREIGN ENTITIES PERFORMING OUTSIDE THE UNITED STATES.

(i) Enter the total number and dollar value of contracting actions (including modifications that will also be reported in Block B8) where the place of performance is outside the United States and outlying areas (see 204.670–1(c)). This includes actions placed directly with a foreign government that are not under international agreements (see paragraph (d)(2)(i)(B) of this subsection). It does not matter whether the contractor is domestic or foreign.

(ii) Enter the subtotals for the number and dollar value of actions (including modifications that will also be reported in Block B8) for—

(A) Block B5a, Simplified Acquisition Procedures (SAP).

(B) Block B5b, GSA Schedule Orders.

(C) Block B5c, Other Federal Schedule Orders.

(D) Block B5d, All Other Orders.

(E) Block B5e, Other Contracting Actions.

(6) BLOCK B6, EDUCATIONAL, NON-PROFIT & OTHER.

(i) Enter the total number and dollar value of contracting actions (including

modifications that will also be reported in Block B8) with—

(A) Educational institutions;

(B) Not-for-profit and nonprofit institutions (defined in FAR 31.701);

(C) Qualified nonprofit agencies employing people who are blind or severely disabled; and

(D) Any other entities not listed in Blocks B1 through B5.

(ii) Enter the subtotals for the number and dollar value of contracting actions (including modifications that will also be reported in Block B8) for—

(A) Block B6a, Simplified Acquisition Procedures (SAP).

(B) Block B6b, GSA Schedule Orders.

(C) Block B6c, Other Federal Schedule Orders.

(D) Block B6d, All Other Orders.

(E) Block B6e, Other Contracting Actions.

(7) BLOCK B7, TOTAL CONTRACTING ACTIONS.

(i) Add Blocks B1 through B6 and enter the totals in Block B7.

(ii) If directed by data collection point procedures, also enter the subtotals for the number and dollar value of contracting actions for—

(A) Block B7a, Simplified Acquisition Procedures, sum of sub-blocks 3a+4a+5a+6a.

(B) Block B7b, GSA Schedule Orders, sum of sub-blocks 3b+4b+5b+6b.

(C) Block B7c, Other Federal Schedule Orders, sum of sub-blocks 3c+4c+5c+6c.

(D) Block B7d, All Other Orders, sum of sub-blocks 3d+4d+5d+6d.

(E) Block B7e, Other Contracting Actions, sum of sub-blocks 3e+4e+5e+6e.

(8) BLOCK B8, TOTAL MODIFICATIONS EXCLUDING SIMPLIFIED ACQUISITION PROCEDURES. Enter the total number and dollar value of modification actions, excluding simplified acquisition procedures.

(e) *Section C, Extent Competed.*

(1) BLOCK C1, COMPETED.

(i) Enter the total number and dollar value of contracting actions which were competed.

(A) Include in Block C1—

(1) Actions not subject to Competition in Contracting Act (CICA) (see FAR 6.001) when at least two quotations or offers were received;

(2) Actions when competitive procedures were used to fulfill the requirement for full and open competition (FAR subpart 6.1);

(3) Actions when full and open competition was provided for after exclusion of source, to establish/maintain alternative sources or to set aside an acquisition exceeding the micro-purchase threshold for small business (FAR Subpart 6.2);

(4) Actions when statutory authorities for other than full and open competition (FAR subpart 6.3) were used and more than one offer was received, except as provided in paragraphs (e)(1)(i)(B) *(2)* and *(3)* of this subsection;

(5) Actions resulting from a contract awarded competitively before CICA (including two-step formal advertising);

(6) Orders/calls and modifications under a Federal schedule; and

(7) Section 8(a) awards competed under FAR 6.204.

(B) Do not include—

(1) Actions that meet the criteria for Section C, Block C2;

(2) Actions awarded under the authority of FAR 6.302–5(b) (2) or (4), authorized or required by statute (report these in Section C, Block C2); or

(3) Actions reported in Section B, Blocks B1 and B2, including actions with the Federal Prison Industries (UNICOR). These actions are treated as not available for competition in published competition reports.

(ii) Enter the subtotals for the number and dollar value of contracting actions for—

(A) Block C1a, Small Business Concerns;

(B) Block C1b, Large Business Concerns;

(C) Block C1c, Domestic or Foreign Entities Performing Outside the United States and Outlying Areas; and

(D) Block C1d, Educational, Nonprofit & Other.

(2) BLOCK C2, NOT AVAILABLE FOR COMPETITION.

(i) Enter the total number and dollar value of contracting actions which were not available for competition.

(A) Include in Block C2—

(1) Actions for brand name commercial products for authorized resale;

(2) Actions authorized or required by statute to be awarded to a specific

source or through another agency in accordance with FAR 6.302–5(b) (2) or (4); e.g., actions with qualified nonprofit agencies employing people who are blind or severely disabled, and noncompetitive 8(a) actions;

(3) Actions (including modifications) at or below the micro-purchase threshold at FAR 2.101; and

(4) Other contract actions when the Director of Defense Procurement has determined that there is no opportunity for competition.

(B) Do not include any actions reported in Section B, Blocks B1 or B2 (e.g., actions with regulated monopolies, actions under foreign military sales or international agreements, and actions with another Federal agency or Government corporation). These actions are treated as not available for competition in published competition reports.

(ii) Enter the subtotals for the number and dollar value of contracting actions for—

(A) Block C2a, Small Business Concerns;

(B) Block C2b, Large Business Concerns;

(C) Block C2c, Domestic or Foreign Entities Performing Outside the United States; and

(D) Block C2d, Educational, Nonprofit and Other.

(3) BLOCK C3, NOT COMPETED.

(i) Enter the total number and dollar value of contracting actions which were not competed, i.e., any actions not reported in Blocks B1 or B2. Do not include actions reported in Section B, Blocks B1 or B2. These actions are treated as not available for competition in published competition reports.

(ii) Enter the subtotals for the number and dollar value of actions for—

(A) Block C3a, Small Business Concerns;

(B) Block C3b, Large Business Concerns;

(C) Block C3c, Domestic or Foreign Entities Performing Outside the United States and Outlying Areas; and

(D) Block C3d, Educational, Nonprofit & Other.

(f) *Section D, Research, Development, Test, & Evaluation Actions. Do not include actions for supplies or services in support of RDT&E work that do not require the contractor to perform RDT&E.*

(1) BLOCK D1, SMALL BUSINESS. Enter the total number and dollar values of RDT&E actions with small business concerns.

(2) BLOCK D2, LARGE BUSINESS. Enter the total number and dollar value of RDT&E actions with large business concerns.

(3) BLOCK D3, DOMESTIC OR FOREIGN ENTITIES PERFORMING OUTSIDE THE UNITED STATES AND OUTLYING AREAS. Enter the total number and dollar value of RDT&E actions where the principal place of performance is outside the United States or outlying areas (see 204.670–1).

(4) BLOCK D4, HISTORICALLY BLACK COLLEGES & UNIVERSITIES OR MINORITY INSTITUTIONS (HBCU/MI). Enter the total number and dollar value of RDT&E actions with HBCUs or MIs.

(5) BLOCK D5, OTHER ENTITIES. Enter the total number and dollar value of RDT&E actions that were reported in Blocks D1 through D4.

(g) *Section E, Selected Socioeconomic Statistics.*

(1) BLOCK E1, SMALL BUSINESS (SB) SET-ASIDE.

(i) Enter the total number and dollar value of contracting actions which were small business set-aside actions, including awards to SDBs reported in Blocks E2c and E2d.

(ii) If the action is an emerging small business set-aside (FAR 19.1006(c)), use the most appropriate sub-block.

(iii) Enter the subtotals for the number and total dollar value of actions for—

(A) Block Ela, SB Set-aside Using Simplified Acquisition Procedures.

Enter actions pursuant to FAR 13.105(a).

(B) Block E1b, SB Set-Aside. Enter actions pursuant to FAR 19.502.

(2) BLOCK E2, SMALL DISADVANTAGED BUSINESS (SDB) ACTIONS.

(i) Enter the total number and dollar value of actions which were small disadvantaged business actions.

(ii) Enter the subtotals for the number and dollar value for—

(A) Block E2a, Through SBA-Section 8(a). Enter actions with the Small Business Administration pursuant to

Section 8(a) of the Small Business Act (FAR subpart 19.8).

(B) Block E2b, SDB Set-Aside/SDB Preference. Enter actions resulting from—

(1) A set-aside for small disadvantaged business (SDB) (219.502–2–70);

(2) Application of an SDB evaluation preference (subpart 219.70); or

(3) SDB preferential consideration (219.502–3).

(C) Block E2c, SB Set-aside Using Simplified Acquisition Procedures. Enter actions pursuant to FAR 13.105(a) when award is to an SDB, but a preference was not applied.

(D) Block E2d, SB Set-Aside. Enter actions under FAR 19.502 when award is to an SDB, but a preference was not applied nor was preferential consideration given.

(E) Block E2e, Other. Enter awards to SDB concerns when award is to an SDB not reported in Blocks E2a through E2d.

(3) BLOCK E3, WOMEN-OWNED SMALL BUSINESS. Enter total number and dollar value of contracting actions with women-owned small businesses (see FAR 19.304(a)).

(4) BLOCK E4, HBCU/MI. Enter the total number and dollar value of contracting actions with HBCU/MIs pursuant to subpart 226.70.

(5) BLOCK E5, JWOD PARTICIPATING NONPROFIT AGENCIES. Enter the total number and dollar value of contracting actions with qualified nonprofit agencies employing people who are blind or severely disabled for supplies or services from the Procurement List pursuant to FAR subpart 8.7.

(6) BLOCK E6, EXEMPT FROM SMALL BUSINESS ACT REQUIREMENTS. Enter the total number and dollar value of contracting actions exempt from the set-aside requirements of the Small Business Act (see FAR 19.502–1).

(h) *Section F, Simplified Acquisition Procedures—Dollar Value Ranges.* Enter in each of the dollar ranges the total number and dollar value of contracting actions which used simplified acquisition procedures (FAR part 13). The total of Section F is normally the sum of Blocks B3a, B4a, B5a, and B6a.

(i) *Section G, Contingency Actions.*

BLOCK G1, TOTAL ACTIONS.

(1) Enter the total number and dollar value of actions in support of a contingency operation (see 213.000). The numbers entered here are a breakout of the numbers already entered in Sections B and C.

(2) Enter the subtotals based on the instructions for completion of Section C for the number and dollar value of contracting actions for—

(i) Block G1a, Competed;

(ii) Block G1b, Not Available for Competition; and

(iii) Block G1c, Not Competed.

(j) *Section H, Remarks and Authentication.*

(1) BLOCK H1, REMARKS. Enter any remarks applicable to this report.

(2) Block H2, CONTRACTING OFFICER.

(i) Block H2a, Typed Name. Enter the name (last, first, middle initial) of the contracting officer or representative.

(ii) Block H2b, Signature. The person identified in Block H2a must sign.

(iii) Block H2c, Telephone Number. Enter the telephone number (with area code) of the person identified in Block H2a. Installations with Defense Switched Network (DSN) must enter their DSN number.

(3) BLOCK H3, DATE REPORT SUBMITTED. Enter the date that the DD Form 1057 is submitted. Enter four digits for the year, two digits for the month and two digits for the day. Use 01 through 12 for January through December. For example, enter January 2,2003, as 20030102.

[61 FR 51040, Sept. 30, 1996, as amended at 62 FR 34136, June 24, 1997; 62 FR 44223, Aug. 20, 1997; 62 FR 49304, Sept. 19, 1997]

253.208 Required sources of supplies and services.

253.208–1 DD Form 448, Military Interdepartmental Purchase Request.

(a) Use the DD Form 448 as prescribed in subpart 208.70.

(b) Prepare MIPR information in uniform contract format when possible. Overprint of fixed repetitive information is authorized.

(c) *Instructions for completion of DD Form 448.* (1) BLOCK 5—MIPR Number. Number the MIPR by using—

(i) The requiring department identification code as prescribed in DoD

4000.25–6–M, Department of Defense Activity Address Directory (DoDAAD);

(ii) The last digit of the fiscal year; and

(iii) The number of the particular MIPR (numbered consecutively by the requiring activity).

(2) Block 6—Amend No. Assign a suffix number. Assign amendments of the same MIPR consecutive suffix numbers.

(3) *Block 9.* (i) Conduct interdepartmental screening of items in accordance with FAR 8.001. Requisition items which are available from stocks of other departments as follows:

(A) Obtain items within the scope of MILSTRIP (see DoD 4000.25–1–M, Military Standard Requisitioning and Issue Procedures (MILSTRIP)) by use of DD Form 1348 (Single Line Item Requisition System Document (Manual), DoD))/1348M (Single Line Item Requisition System Document, DoD (Mechanical)).

(B) Obtain items not covered by MILSTRIP using DD Form 1149, Requisition and Invoice/Shipping Document.

(C) If, after receipt of a MIPR, it is determined the requested items are available from stock, the acquiring department shall use the MIPR to obtain the item.

(ii) Normally restrict a MIPR to one major end item, including its required spare parts, ground support equipment, and similar related items. For other than major end items, limit MIPRs to items within a single Federal supply class when possible.

(4) *Block 10*—(i) *Delivery Schedules.* (A) The requiring department must clearly state the required time of delivery or performance in each MIPR, taking into consideration the normal administrative lead time of the particular commodity. Delivery and performance schedules on MIPRs must be realistic (see FAR 12.1). If the acquiring department cannot accept the delivery schedule in the MIPR, the acquiring department will note that on DD Form 448–2, Acceptance of MIPR. Changes in the requested delivery schedule must be made by MIPR amendment.

(B) When a short delivery schedule is mandatory, the requiring department shall mark the MIPR ''URGENT'' in bold letters and provide justification for the marking.

(ii) Requiring activities must provide MILSTRIP requisition data prescribed in appendix B of the MILSTRIP Manual for each line item which is to be delivered to each ''ship to'' address. Repetitive data applicable to all lines on the MIPR may be overprinted.

(iii) The requiring activity will furnish estimated weight, cube, and dimensions for each line item or a statement explaining why these data are not available.

(iv) The requiring activity shall include the name and telephone number of an individual who is thoroughly familiar with the MIPR, its attachments, and technical requirements.

(v) Prepare attachments to MIPRs in sufficient numbers so that each copy of a MIPR submitted to the acquiring department is complete with a copy of all attachments. ''Ship To and Mark For'' addresses in shipping instructions must include the clear text identification and DoDAAD code if assigned.

(5) *Block 12—transportation allotment.* Enter allotment data for transportation of supplies at Government expense if appropriate.

(6) *Block 13—mail invoices to.* Use this block to identify the name and address of the office to receive invoices and make payment. (i) Complete the block only if—

(A) The resulting contract is not to be paid by the Defense Contract Management Command or the Defense Finance Center; and

(B) The office to receive invoices and make payment is known at the time of preparation of the MIPR.

(ii) If payment is to be made by an office designated to receive invoices, also enter the DoDAAD code of that office.

(iii) If payment is to be made by an office other than the office to which the invoice is to be mailed, include the name, address, and DoDAAD code of the payment office as an attachment to the MIPR.

(iv) If multiple offices are to receive invoices and make payment, include the names and addresses of those offices as an attachment to the MIPR. Also include the DoDAAD code of each payment office.

(v) Whenever the payment office is included in an attachment, include a reference to the attachment in this block.

(vi) If the names and addresses of invoicing and payment offices are provided the acquiring department after submission of the MIPR, the requiring department also must provide the DoDAAD code for each payment office.

(7) *Block 14.* Enter allotment data for the acquisition of supplies. Enter each citation in Item 14 in the appropriate space as follows—

(i) *Accounting classification reference number (ACRN).* If the ACRN procedures of 204.7108 are used in the MIPR to relate allotment data to the MIPR item or delivery, enter the ACRN for each fund citation. (The acquiring department, when preparing the contract, is not required to use the ACRN assigned to a fund citation in the MIPR.)

(ii) *Appropriation.* Enter the ten positions as follows:

(A) First and second—Treasury Department number identifying the department or agency to which the appropriation applies or has been transferred.

(B) Third and fourth—Treasury Department number identifying the department or agency from which an appropriation has been transferred; leave blank if no transfer is involved.

(C) Fifth and sixth—Identify the appropriation fiscal year. For multiple-year appropriations, the fifth position shall be the last digit of the first year of availability, and the sixth position shall be the last digit of the final year of availability. For annual appropriations, the fifth position shall be blank, and the sixth position shall be the last digit of the fiscal year. For no-year (continuing) appropriations, the fifth position shall be blank, and the sixth position shall be ''X.''

(D) Seventh through tenth—Treasury Department appropriation serial number.

(iii) *Limit/Subhead.* Up to four characters; if less than four characters, leave empty spaces blank.

(iv) *Supplemental accounting classification data.* Not to exceed 36 characters. Enter in accordance with departmental or agency regulations.

(v) *Accounting station.* Enter the six character DoDAAD code of the accounting station (not used with Navy and Marine Corps funds).

(vi) *Amount.* Enter the amount for each fund citation if more than one allotment is cited.

(vii) *Additional citations.* If space is required for additional fund citations, include as an attachment and reference the attachment on the form.

(d) When preparing a MIPR amendment, always fill out the basic information in Blocks 1 through 8. Fill out only those other blocks which vary from the data shown on the basic MIPR or a prior amendment. Insert ''n/c'' in items where there is no change.

(e) Change of a disbursing office cited on a DoD funded MIPR does not require a MIPR amendment when the resultant contract is assigned for administration to the Defense Contract Management Command. The administrative contracting office may issue an administrative change order, copies of which will be provided to the contracting officer for transmittal to the requiring activity.

253.208–2 DD Form 448–2, Acceptance of MIPR.

(a) Use the DD Form 448–2 as prescribed in subpart 208.70.

(b) Instructions for completion of DD Form 448–2. (Complete only the applicable blocks.) (1) *Block 6.* Check the specific terms under which the MIPR is being accepted.

(2) *Block 7.* If any one of the MIPR line items is not accepted, check Block 7 and record the affected MIPR line item number and reason in Block 13.

(3) *Blocks 8 and 9.* Use Blocks 8 and 9 only—

(i) When Block 6c acceptance is indicated (indicate the MIPR line item numbers that will be provided under each method of financing in Blocks 8a and 9a, respectively); or

(ii) If quantities or estimated costs cited in a MIPR require adjustment (list the affected MIPR line item numbers together with the adjusted quantities or estimated costs in the columns provided under Blocks 8 and 9, as appropriate).

(4) *Block 10.* Whenever a MIPR is accepted in part or in total under Category II funding, forecast the estimated date of contract award.

(5) *Block 11.* Enter the total amount of funds required to fund the MIPR items, as accepted.

(6) *Block 12.* (i) Complete this block only in those cases where the amount recorded in Block 11 is not in agreement with the amount recorded in Block 5. This will serve either—

(A) As a request to the requiring department to issue a MIPR amendment to provide the additional funds; or

(B) Authority for the requiring department to withdraw the available excess funds.

(ii) When funds of two or more appropriations are involved, provide proper breakdown information in Block 13.

(7) *Block 13.* Use this block to record—

(i) Justification, by MIPR line item, for any additional funds required;

(ii) Explanation for rejection of MIPR whether in part or in total;

(iii) Appropriation and subhead data cited on the MIPR; and

(iv) Other pertinent data.

(c) Complete a DD Form 448–2 for all MIPR amendments involving an adjustment of funds or delivery schedule, or if requested by the requiring department.

(d) Unless otherwise agreed, provide the requiring department an original and three copies of each DD Form 448–2.

253.209 Contractor qualifications.

253.209–1 Responsible prospective contractors.

(a) *SF 1403, Preaward Survey of Prospective Contractor (General).* (i) The factors in Section III, Block 19, generally mean—

(A) *Technical capability.* An assessment of the prospective contractor's key management personnel to determine if they have the basic technical knowledge, experience, and understanding of the requirements necessary to produce the required product or provide the required service.

(B) *Production capability.* An evaluation of the prospective contractor's ability to plan, control, and integrate manpower, facilities, and other resources necessary for successful contract completion. This includes—

(*1*) An assessment of the prospective contractor's possession of, or the ability to acquire, the necessary facilities, material, equipment, and labor; and

(*2*) A determination that the prospective contractor's system provides for timely placement of orders and for vendor follow-up and control.

(C) *Quality assurance capability.* An assessment of the prospective contractor's capability to meet the quality assurance requirements of the proposed contract. It may involve an evaluation of the prospective contractor's quality assurance system, personnel, facilities, and equipment.

(D) *Financial capability.* A determination that the prospective contractor has or can get adequate financial resources to obtain needed facilities, equipment, materials, etc.

(E) *Accounting system and related internal controls.* An assessment by the auditor of the adequacy of the prospective contractor's accounting system and related internal controls as defined in 242.7501, Definition. Normally, a contracting officer will request an accounting system review when soliciting and awarding cost-reimbursement or incentive type contracts, or contracts which provide for progress payments based on costs or on a percentage or stage of completion.

(ii) The factors in section III, Block 20, generally mean—

(A) *Government property control.* An assessment of the prospective contractor's capability to manage and control Government property.

(B) *Transportation.* An assessment of the prospective contractor's capability to follow the laws and regulations applicable to the movement of Government material, or overweight, oversized, hazardous cargo, etc.

(C) *Packaging.* An assessment of the prospective contractor's ability to meet all contractual packaging requirements including preservation, unit pack, packing, marking, and unitizing for shipment.

(D) *Security clearance.* A determination that the prospective contractor's facility security clearance is adequate and current. (When checked, the surveying activity will refer this factor to

the Defense Investigative Service (DIS)).

(E) *Plant safety*. An assessment of the prospective contractor's ability to meet the safety requirements in the solicitation.

(F) *Environmental/energy consideration*. An evaluation of the prospective contractor's ability to meet specific environmental and energy requirements in the solicitation.

(G) *Flight operations and flight safety*. An evaluation of the prospective contractor's ability to meet flight operation and flight safety requirements on solicitations involving the overhaul and repair of aircraft.

(H) *Other*. If the contracting officer wants an assessment of other than major factors A–E and other factors A–G, check this factor. Explain the desired information in the Remarks sections.

[56 FR 36554, July 31, 1991, as amended at 60 FR 29504, June 5, 1995]

253.213 Small purchase and other simplified purchase procedures (SF's 18, 30, 44, 1165, OF's 347, 348).

(e) *OF 347 (10/83), Order for Supplies or Services, and OF 348 (10/83), Order for Supplies or Services-Schedule Continuation*. DoD uses the DD Form 1155, Order for Supplies or Services, instead of OF 347. DoD uses Optional Form 336, Continuation Sheet, instead of OF 348.

(i) Use the DD Form 1155 as prescribed in 213.505–2(b) and in accordance with the instructions at 253.213–70.

(ii) Use the OF 336, or a sheet of paper, as a continuation sheet for the DD Form 1155. Continuation sheets may be printed on the reverse of the DD Form 1155.

(iii) DD Form 1155c–1, Order for Supplies or Services (Commissary Continuation Sheet) may be used for commissary acquisitions.

253.213–70 Instructions for completion of DD Form 1155.

(a) These instructions are mandatory if—

(1) Contract administration has been assigned outside the purchasing office; or

(2) The contractor is located in the continental United States or Canada.

(b) The entity codes (address codes) referenced in this subsection are codes published in—

(1) *DoD Activity Address Directory (DODAAD), DoD 4000.25–6–M*.

(2) *Military Assistance Program Address Directory System (MAPAD), DoD 4000.25–8–M*.

(3) *Commercial and Government Entity (CAGE) Codes Handbook H4/H8*.

(c) For orders requiring payment in Canadian currency—

(1) State the contract price in terms of Canadian dollars, followed by the initials CN; e.g., $1,647.23CN.

(2) Indicate on the face of the order—

(i) The U.S./Canadian conversion rate in effect at the time of the award; and

(ii) The U.S. dollar equivalent of the Canadian dollar amount.

(d) When the DD Form 1155 includes FMS requirements, clearly mark FMS requirement on its face. Specify within the order each FMS case identifier code by line or subline item number.

(e) Instructions for DD Form 1155 entries. (Instructions apply to both purchase orders and delivery orders, except Block 2, which applies only to delivery orders, and Block 12, which applies only to purchase orders.)

BLOCK

1 Contract/Purch Order No.—

Enter the Procurement Instrument Identification (PII) number and, when applicable, the supplementary identification number for contracts and purchase orders as prescribed in subpart 204.70.

2 Delivery Order No.—

Enter PII number for delivery orders, when applicable, as prescribed in subpart 204.70.

3 Date of Order—

Enter the two position numeric year, three position alpha month, and two position numeric day.

4 Requisition/Purch Request No.—

Enter the number authorizing the purchase. When the number differs by line item, list it in the schedule and annotate this block, ''see schedule.''

5 Priority—

Enter the appropriate Program Identification Code as identified in Schedule I to the Defense Priorities and Allocations System Regulation.

6 Issued by—

Enter the name and address of the issuing office. In the code block, enter the DODAAD code for the issuing office. Directly below the address, enter: Buyer/Symbol: followed by the buyer's name and routing symbol. Directly below the buyer/symbol, enter: Phone: followed by the buyer's phone number and extension.

7 Administered by—

Enter the name and address of the contract administration activity. On purchase orders retained by purchasing offices for administration, mark this block, ''see block 6.'' Enter in the code block the DODAAD code of the contract administration activity. In the lower right or left-hand corner, enter the criticality designator code from FAR 42.1105.

8 Delivery FOB—

Check the applicable box.

9 Contractor—

(i) Enter the full business name and address of the contractor. Enter in the first code block, the CAGE code of the contractor.

(ii) If it is known that all the work covered by the order is to be performed at an address different from the address represented by the contractor's code, and any contract administration function will be required at that facility, enter in the facility code block the organizational entity code for that facility, i.e., H8–1/H8–2 code for a non-Government entity or DODAAD code for a Government entity. (Use DODAAD codes only to indicate ''performed at'' locations for orders specifying services at a Government location.) If it is known that multiple facilities are involved, enter the codes for all facilities at which work is to be performed, including the contractor's code if work is performed at that address, in the Optional Form 336 Continuation Sheet and mark the facility code block with ''see schedule.''

10 Deliver to FOB Point by (Date)—

If a single date of delivery applies to the entire order, enter date in this block. List multiple delivery dates in the schedule and mark this block ''see schedule.''

11 Mark if Business—

Check all applicable blocks.

12 Discount Terms—

Enter the discount for prompt payment in terms of percentages and corresponding days. Express the percentages in whole numbers and decimals, e.g., 3.25%—10 days; 0.50%—20 days.

13 Mail Invoices to—

Enter a reference to the block number containing the address to which invoices are to be mailed. When not in Blocks 6, 7, 14, or 15, insert in Block 13, ''see schedule.''

14 Ship to—

If a single ship-to point applies to the entire order, enter the name and address of that point in this block and a DODAAD code in the code block. For FMS shipments, enter the MAPAD code in the code block and an instruction for the contractor to contact the transportation office of the administering activity to obtain a name and shipping address. Enter multiple ship-to points in the schedule and mark this block, ''See Schedule.''

15 Payment Will be Made by—

Enter the name and address of the activity making payment. Enter in the code block, the DODAAD code of the paying activity.

16 Type of Order—

Check the appropriate box. If a purchase order:

(i) Identify the type of quotation, i.e., oral, letter or TWX, on which the order is based.

(ii) Check the box when acceptance of the purchase order is required and enter the number of copies of the order to be returned to the issuing office.

17 Accounting and Appropriation Data/Local Use—

Enter the accounting classification and the accounting classification reference number(s) in accordance with 204.7108.

BLOCK

18 Item No.—

Enter an item number for each item of supply or service in accordance with subpart 204.71.

19 Schedule of Supplies/Services—

The schedule contains several elements of data. The order and arrangement of data in the schedule is mandatory for purchase and delivery orders assigned to DCMC or the military departments for administration and is encouraged for all orders.

(1) *National Stock Number (NSN)*—

Total item quantity for the line or subline item number followed by the appropriate national stock number or the word ''none'' if an NSN has not been assigned. On the same line and adjacent to NSN, enter the words ''Total Item Quantity.'' This phrase is used in conjunction with the total quantity, unit of issue, unit price, and dollar amount of the stock number or item cited (see entries for Blocks 20, 21, 22, and 23).

(2) *Item Identification*—

Enter first the most descriptive noun or verb of the supplies or services to be furnished, supplemented by additional description as prescribed in FAR part 10. If multiple accounting classifications apply to the contract, enter the accounting classification reference number.

(3) *Quantity Variance*—

Enter the quantity variance permitted for the line item in terms of percentages, indicating whether the percentage is plus or minus and if applicable to each destination.

(4) *Inspection/Acceptance*—

Enter the point at which inspection/acceptance will take place.

(5) *Preservation and Packaging*—

Enter the preservation requirements for the item described. These requirements may be expressed in terms of MIL–STD–2073–1, DoD Material Procedures for Development and Application of Packaging Requirements, and MIL–STD–2073–2, Packaging Requirements, codes. They may also be expressed by reference to applicable specifications.

(6) *Packing*—

When required, enter the packing level designator and specification, standard, or document in which the requirements are stated or state the specific requirements.

(7) *Unitization*—

When desired by the requiring activity, a requirement for cargo unitization for a particular destination should be specified for shipments involving two or more shipping containers having an aggregate total of not less than 20 cubic feet or 200 pounds.

(8) *Ship To*—

Enter the DODAAD or MILSCAP H8–1/H8–2 (cage) as appropriate for the entity code of the ship-to point on the first line and the corresponding name and address on succeeding lines. If multiple accounting classifications apply to the same line or subline item, enter the accounting classification reference number. When several items are to be shipped to the same point, the code will be listed; but it will not be necessary to repeat the address.

(9) *Delivery Date*—

When multiple delivery dates apply, enter the required date of delivery on the same line with ship-to code.

(10) *Mark For*—

Enter the DODAAD or MILSCAP H8–1/H8–2 (cage) as appropriate for the entity code on the first line and name and address of the ultimate recipient of the supplies and services on succeeding lines.

20 Quantity Ordered/Accepted—

Enter the total quantity ordered for the line item. If applicable, enter the breakdown on quantities for each ship-to point within the line item.

21 Unit—

Enter the unit of measure applicable to the line item.

22 Unit Price—

Enter the unit price applicable to the line item.

23 Amount—

Enter the extended dollar amount (quantity x unit price) for each line item.

24 Contracting/Ordering Officer—

Enter the contracting/ordering officer's signature.

25 Total Amount—

Enter the total dollar amount for all line items on the order.

26 thru 42 These blocks are used in the receiving and payment functions. Procedures for making entries are prescribed by the respective departments.

[56 FR 36554, July 31, 1991, as amended at 61 FR 7751, Feb. 29, 1996]

253.215 Contracting by negotiation.

253.215–70 DD Form 1547, Record of Weighted Guidelines Application.

(a) Use the DD Form 1547 as prescribed in 215.970.

(b) *General instructions.* (1) Report amounts as they relate to the price of the contract action without regard to funding status (e.g., amounts obligated).

(2) Express all dollar values to the nearest whole value (e.g., $200,008.55=$200,009).

(3) Express all percentages to the nearest hundredth or thousandth as appropriate (e.g., interest rate—8.25% or 8.257%).

(4) If the contracting office is exempt from reporting to the DoD management information system on profit and fee statistics (see 215.975), do not complete Blocks 1, 4, 5, 6, 7, 8, 9, 10, 11, or 12.

(5) Report an option amount for additional quantities as a separate contract action when exercised.

(6) Even though fixed-price type contract actions are negotiated on the basis of total price, prepare the negotiation summary portion of the DD Form 1547 showing the contracting officer's best estimates of cost and profit.

(7) Ensure compliance with 215.871–5.

(8) For indefinite delivery-type contracts, prepare a consolidated DD Form 1547 for annual requirements expected to exceed $500,000.

(9) Prepare a consolidated DD Form 1547, if possible, when multiple profit rates apply to a single negotiation.

(c) *Specific instructions for completion of DD Form 1547*—(1) *Block 1—report no.* Enter the four-digit local control number followed by a dash and the last two digits of the fiscal year (e.g., 0004–90 for 4th action in fiscal year 1990). Each field contracting office participating in profit reporting shall establish a control system for consecutively numbering completed DD Forms 1547. Always start with 0001 at the beginning of each fiscal year and always use four digits. This number will identify the specific DD Form 1547 in DoD's management information system and will be used for follow-up actions.

(2) *Block 2—basic procurement instrument identification no.* Enter the identifying contract number assigned per 204.70 (Block B1A of the DD 350).

(3) *Block 3—SPIIN.* Enter the supplemental procurement instrument identification number for supplemental agreements or other modifications, assigned per 204.70, (Block B2 of the DD 350).

(4) *Block 4—date of action*—(i) *Year.* Enter the last two digits of the year the action was negotiated (e.g., 90 for 1990).

(ii) *Month.* Enter the two digit number for the month the action was negotiated (e.g., 09 for September).

(5) *Block 5—contracting office code.* Enter the code assigned the contracting office per DoD Procurement Coding Manual, Volume III, (Block A3 of the DD 350).

(6) *Block 6—name of contractor.* Enter the contractor's name (including division name), (Block B5D of the DD 350).

(7) *Block 7—DUNS number.* Enter the contractor establishment code number, (Block B5A of the DD 350).

(8) *Block 8—federal supply code.* Enter the code used in Block B12A of the DD 350.

(9) *Block 9—DOD claimant program.* Enter the code used in Block B12B of the DD 350.

(10) *Block 10—contract type code.* Enter the appropriate code—

Description	Code
FPR (all types)	A
FPI (all types)	L
FFP	J
FP(E)	K
CPFF	U
CPIF (all types)	V

(11) *Block 11—type effort.* Enter the appropriate code—

Description	Code
Manufacturing	1
Research and Development	2
Services	3

(12) *Block 12—use code.* Enter the appropriate code for use of the weighted guidelines method—

Description	Code
Standard weighted guidelines method (215.971)	2
Alternate performance risk, no facilities employed (215.971–2(c)(2))	1
Alternate facilities capital employed (215.971–4(c)(2))	3
Alternate structured approach (215.973)	4
Modified weighted guidelines approach (215.972)	5

(13) *Blocks 13 through 20—cost category objective.* Enter the prenegotiation objectives. Include contractor independent research and development/bid and proposal in the general and administrative expenses in Block 19.

(14) *Blocks 21 through 29—weighted guidelines profit factors.* Enter the amounts determined in 215.971 or 215.972. This section is not required to be completed when using an alternate structured approach (215.973).

(15) *Block 30—total profit objective.* Enter the total of Blocks 24, 25, 26, 28, and 29. This section is not required to be completed when using an alternate structured approach (215.973).

(16) *Blocks 31 through 35—negotiation summary.* Complete as indicated on the form. For fixed-price type contracts negotiated on a total price basis, enter the contracting officer's best estimates of cost and profit. When using an alternate structured approach, see 215.973(b)(2) for offsets.

(17) *Blocks 36 through 39—contracting officer approval.* The contracting officer shall sign the form. Include a complete (with area code) commercial telephone

number to facilitate any follow-up actions.

(18) *Blocks 96 through 99—optional use.* Complete in accordance with department/agency procedures, if any.

NOTE: Department of Defense Acquisition Forms are not published in the FEDERAL REGISTER or the Code of Federal Regulations. For the convenience of the user, the list set forth below includes section numbers, form numbers, and titles.

253.303–250 Material Inspection and Receiving Report.
253.303–250c Material Inspection and Receiving Report-Continuation Sheet.
253.303–250–1 Tanker/Barge Material Inspection and Receiving Report.
253.303–350 Individual Contracting Action Report.
253.303–375 Production Progress Report.
253.303–375c Production Progress Report (Continuation).
253.303–375–2 Delay in Delivery.
253.303–416 Purchase Request for Coal, Coke or Briquettes.
253.303–428 Communication Service Authorization.
253.303–448 Military Interdepartmental Purchase Request.
253.303–448–2 Acceptance of MIPR.
253.303–879 Statement of Compliance.
253.303–882 Report of Inventions and Subcontracts.
253.303–1057 Monthly Contracting Summary of Actions $25,000 or Less.
253.303–1114 Instructions for Use of Contract Termination Settlement and Inventory Schedule Forms.
253.303–1131 Cash Collection Voucher.
253.303–1149 Requisition and Invoice/Shipping Document.
253.303–1155 Order for Supplies or Services.
253.303–1155c–1 Order for Supplies or Services (Commissary Continuation Sheet).
253.303–1342 Property Record.
253.303–1348 Single Line Item Requisition System Document (Manual).
253.303–1348m Single Line Item Requisition System Document (Mechanical).
253.303–1348–1 Single Line Item Release/Receipt Document.
253.303–1384 Transportation Control and Movement Document.
253.303–1391 FY 19____ Military Construction Project Data.
253.303–1419 Industrial Plant Equipment Requisition.
253.303–1423 Contract Data Requirements List.
253.303–1423–1 Contract Data Requirements List (1 Data Item).
253.303–1423–2 Contract Data Requirements List (2 Data Items).
243.303–1425 Specifications and Standards Requisition.
253.303–1484 Post-Award Conference Record.
253.303–1507 Work Stoppage Report.
253.303–1513 United States Department of Defense Offer and Acceptance.
253.303–1535 Request/Approval for Authority to Advertise.
253.303–1547 Record of Weighted Guidelines Application.
253.303–1568 Labor Standards Investigation Summary Sheet.
253.303–1592 Contract Cross Reference Data.
253.303–1593 Contract Administration Completion Record.
253.303–1594 Contract Completion Statement.
253.303–1597 Contract Closeout Check-List.
253.303–1598 Contract Termination Status Report.
253.303–1635 Plant Clearance Case Register.
253.303–1637 Notice of Acceptance of Inventory Schedules.
253.303–1638 Report of Disposition of Contractor Inventory.
253.303–1639 Scrap Warranty.
253.303–1640 Request for Plant Clearance.
253.303–1641 Disposal Determination Approval.
253.303–1651 Industrial Equipment Modernization Program Post Analysis Report.
253.303–1653 Transportation Data for Solicitations.
253.303–1654 Evaluation of Transportation Cost Factors.
253.303–1659 Application for U.S. Government Shipping Documentation/Instructions.
253.303–1662 Property in the Custody of Contractors.
253.303–1664 Data Item Description.
253.303–1707 Information to Offerors or Quoters.
253.303–1861 Contract Facilities Capital Cost of Money.
253.303–1921 Cost Data Summary Report.
253.303–1921–1 Functional Cost-Hour Report.
253.303–2025 Packaging Change Recommendation/Approval.
253.303–2051 Request for Assignment of a Commercial and Government Entity (CAGE) Code.
253.303–2051–1 Request for Information/Verification of Commercial and Government Entity (CAGE) Code.
253.303–2139 Report of Contract Performance Outside the United States.
253.303–2222 Short Form Research Contract (SFRC) Modification.
253.303–2222–1 Representations and Certifications from Offerors Submitting Proposals Under DFARS 35.70.
253.303–2222–2 Short Form Research Contract Research Proposal Cover Page.
253.303–2579 Small Business Coordination Record.
253.303–2626 Performance Evaluation (Construction).

253.303–2631 Performance Evaluation (Architect-Engineer).

[56 FR 36554, July 31, 1991, as amended at 59 FR 27677, 27678, May 27, 1994; 60 FR 29504, June 5, 1995; 61 FR 7751, Feb. 29, 1996; 61 FR 18195, Apr. 24, 1996; 61 FR 51043, Sept. 30, 1996; 62 FR 34136, June 24, 1997]

SUBCHAPTER I—AGENCY SUPPLEMENTARY REGULATIONS

APPENDIX A—ARMED SERVICES BOARD OF CONTRACT APPEALS

Sec.

Part 1—Charter
Part 2—Rules

AUTHORITY; 41 U.S.C. 421 and 48 CFR chapter 1.

ARMED SERVICES BOARD OF CONTRACT APPEALS

Approved 1 May 1962.
Revised 1 May 1969.
Revised 1 September 1973.
Revised 1 July 1979.

Part 1—Charter

1. There is created the Armed Services Board of Contract Appeals which is hereby designated as the authorized representative of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy and the Secretary of the Air Force, in hearing, considering and determining appeals by contractors from decisions of contracting officers or their authorized representatives or other authorities on disputed questions. These appeals may be taken (a) pursuant to the Contract Disputes Act of 1978 (41 U.S.C. Sec. 601, et seq.), (b) pursuant to the provisions of contracts requiring the decision by the Secretary of Defense or by a Secretary of a Military Department or their duly authorized representative or board, or (c) pursuant to the provisions of any directive whereby the Secretary of Defense or the Secretary of a Military Department has granted a right of appeal not contained in the contract on any matter consistent with the contract appeals procedure. The Board may determine contract disputes for other departments and agencies by agreement. The Board shall operate under general policies established or approved by the Under Secretary of Defense (Research and Engineering).

2. Membership of the Board shall consist of attorneys at law who have been qualified in the manner prescribed by the Contract Disputes Act of 1978. Members of the Board are hereby designated Administrative Judges. There shall be appointed from members of the Board a chairman and two or more vice-chairmen. Appointment of the chairman and vice-chairmen and other members of the Board shall be made by the Under Secretary of Defense (Research and Engineering) and the Assistant Secretaries of the Military Departments responsible for procurement. The chairman and vice-chairmen shall serve in that capacity for a two-year term unless sooner removed or reappointed for an additional term or terms. The Under Secretary will also designate the order in which the vice-chairmen will act for the chairman in his absence. In the absence of a vice-chairman, the chairman or acting chairman may designate a member of the Board to serve as a temporary vice-chairman.

3. It shall be the duty and obligation of the members of the Armed Services Board of Contract Appeals to decide appeals on the record of the appeal to the best of their knowledge and ability in accordance with applicable contract provisions and in accordance with law and regulation pertinent thereto.

4. The chairman of the Board shall be responsible for establishing appropriate divisions of the Board to provide for the most effective and expeditous handling of appeals. He shall be reponsible for assigning appeals to the divisions for decision without regard to the military department or other procuring agency which entered into the contract. A division may consist of one or more members of the Board. The chairman shall designate one member of each division as the division head. The division heads and the chairman and vice-chairmen shall constitute the senior deciding group of the Board. A majority of the members of a division or of the senior deciding group shall constitute a quorum for the transaction of the business of each, respectively. Decisions of the Board shall be by majority vote of the members of a division participating and the chairman and a vice-chairman, unless the chairman refers the appeal for decision by the senior deciding group. The decision of the Board in cases so referred to the senior deciding group shall be by majority vote of the participating members of that group. The chairman may refer an appeal of unusual difficulty, significant precedential importance, or serious dispute within the normal decision process for decision by the senior deciding group. An appeal involving $50,000 or less may be decided by a single member or fewer members of the Board than hereinbefore provided for cases of unlimited dollar amount, under accelerated or expedited procedures as provided in the Rules of the Board and the Contract Disputes Act of 1978.

5. The Board shall have all powers necessary and incident to the proper performance of its duties. Subject to the approval of the Under Secretary of Defense (Research and Engineering) and the Assistant Secretaries of the Military Departments responsible for procurement, the Board shall adopt its own methods of procedure, and rules and regulations for its conduct and for the preparation and presentation of appeals and issuance of opinions. The Military Departments and other procuring agencies shall provide

legal personnel to prepare and present the contentions of the departments or agencies in relation to appeals filed with the Board. It shall not be necessary for the Board, unless it otherwise desires, to communicate with more than one trial attorney in each of the departments or agencies concerning the preparation and presentation of appeals and the obtaining of all records deemed by the Board to be pertinent thereto.

6. Any member of the Board or any examiner, designated by the chairman, shall be authorized to hold hearings, examine witnesses, and receive evidence and argument for consideration and determination of the appeal by the designated division. A member of the Board shall have authority to administer oaths and issue subpoenas as specified in section 11 of the Contract Disputes Act of 1978. The chairman may request orders of the court in cases of contumacy or refusal to obey a subpoena in the manner prescribed in that section.

7. The chairman shall be responsible for the internal organization of the Board and for its administration. He shall provide within approved ceilings for the staffing of the Board with non-member personnel, including hearing examiners, as may be required for the performance of the functions of the Board. The chairman shall appoint a recorder of the Board. Such personnel shall be responsible to and shall function under the direction, supervision and control of the chairman.

8. The Board will be serviced by the Department of the Army for administrative support for its operations as required. Administrative support will include budgeting, funding, fiscal control, manpower control and utilization, personnel administration, security administration, supplies, and other administrative services. The Departments of the Army, Navy, Air Force and the Office of the Secretary of Defense will participate in financing the Board's operations on an equal basis and to the extent determined by the Assistant Secretary of Defense (Comptroller). The cost of processing appeals for departments and agencies other than those in the Department of Defense will be reimbursed.

9. The chairman of the Board will furnish the Secretary of Defense and to the Secretaries of the Military Departments by October 31 of each year a report containing an account of the Board's transactions and proceedings for the preceding fiscal year. Within 30 days following the close of a calendar quarter, the chairman shall forward a report of the Board's proceedings for the quarter to the Under Secretary of Defense (Research and Engineering), the Assistant Secretaries of the Military Departments responsible for procurement, and to the Director of the Defense Logistics Agency. Such reports shall disclose the number of appeals received, cases heard, opinions rendered, current reserve of pending matters, and such other information as may be required.

10. The Board shall have a seal bearing the following inscription: ''Armed Services Board of Contract Appeals.'' This seal shall be affixed to all authentications of copies of records and to such other instruments as the Board may determine.

11. This revised charter is effective April 21, 1980.

Approved:

W. Graham Claytor, Jr.
Deputy Secretary of Defense
Clifford L. Alexander, Jr.
Secretary of the Army
E. Hidalgo
Secretary of the Navy
Hans M. Mark
Secretary of the Air Force

Part 2—Rules

Approved 15 July 1963.
Revised 1 May 1969.
Revised 1 September 1973.
Revised 30 June 1980.

Preface

I. Jurisdiction for Considering Appeals

The Armed Services Board of Contract Appeals (referred to herein as the Board) shall consider and determine appeals from decisions of contracting officers pursuant to the Contract Disputes Act of 1978 Pub. L. 95–563, 41 U.S.C. 601–613) relating to contracts made by (i) the Departments of Defense, Army, Navy and Air Force or (ii) any other executive agency when such agency or the Administrator for Federal Procurement Policy has designated the Board to decide the appeal.

II. Location and Organization of the Board

(a) The Board's address is Skyline Six, 5109 Leesburg Pike, 7th Floor, Falls Church, VA 22041, telephone (202) 756–8500 (receptionist), 756–8502 (recorder).

(b) The Board consists of a chairman, two or more vice chairmen, and other members, all of whom are attorneys at law duly licensed by a state, commonwealth, territory, or the District of Columbia. Board members are designated Administrative Judges.

(c) There are a number of divisions of the Armed Services Board of Contract Appeals, established by the Chairman of the Board in such manner as to provide for the most effective and expeditious handling of appeals. The Chairman and a Vice Chairman of the Board act as members of each division. Appeals are assigned to the divisions for decision without regard to the military department or other procuring agency which entered into the contract involved. Hearing may be held by a designated member (Administrative Judge), or by a duly authorized examiner. Except for

appeals processed under the expedited or accelerated procedure, the decision of a majority of a division constitutes the decision of the Board, unless the chairman refers the appeal to the Board's Senior Deciding Group (consisting of the chairman, vice chairmen and all division heads), in which event a decision of a majority of that group constitutes the decision of the Board. Appeals referred to the Senior Deciding Group are those of unusual difficulty, significant precedential importance, or serious dispute within the normal division decision process. For decisions of appeals processed under the expedited or accelerated procedure, see rules 12.2(c) and 12.3(b).

Preliminary Procedures

1. *Appeals, How Taken.* (a) Notice of an appeal shall be in writing and mailed or otherwise furnished to the Board within 90 days from the date of receipt of a contracting officer's decision. A copy thereof shall be furnished to the contracting officer from whose decision the appeal is taken.

(b) Where the contractor has submitted a claim of $50,000 or less to the contracting officer and has requested a written decision within 60 days from receipt of the request, and the contracting officer has not done so, the contractor may file a notice of appeal as provided in subparagraph (a) above, citing the failure of the contracting officer to issue a decision.

(c) Where the contractor has submitted a properly certified claim over $50,000 to the contracting officer or has requested a decision by the contracting officer which presently involves no monetary amount pursuant to the Disputes clause, and the contracting officer has failed to issue a decision within a reasonable time, taking into account such factors as the size and complexity of the claim, the contractor may file a notice of appeal as provided in subparagraph (a) above, citing the failure of the contracting officer to issue a decision.

(d) Upon docketing of appeals filed pursuant to (b) or (c) hereof, the Board may, at its option, stay further proceedings pending issuance of a final decision by the contracting officer within such period of time as is determined by the Board.

(e) In lieu of filing a notice of appeal under (b) or (c) hereof, the contractor may request the Board to direct the contracting officer to issue a decision in a specified period of time, as determined by the Board, in the event of undue delay on the part of the contracting officer.

2. *Notice of Appeal, Contents of.* A notice of appeal should indicate that an appeal is being taken and should identify the contract (by number), the department and/or agency involved in the dispute, the decision from which the appeal is taken, and the amount in dispute, if known. The notice of appeal should be signed personally by the appellant (the contractor taking the appeal), or by the appellant's duly authorized representative or attorney. The complaint referred to in rule 6 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

3. *Docketing of Appeals.* When a notice of appeal in any form has been received by the Board, it shall be docketed promptly. Notice in writing shall be given to the appellant with a copy of these rules, and to the contracting officer.

4. *Preparation, Content, Organization, Forwarding, and Status of Appeal File*— (a) *Duties of Contracting Officer*— Within 30 days of receipt of an appeal, or notice that an appeal has been filed, the contracting officer shall assemble and transmit to the Board an appeal file consisting of all documents pertinent to the appeal, including:

(1) The decision from which the appeal is taken;

(2) The contract, including pertinent specifications, amendments, plans and drawings;

(3) All correspondence between the parties relevant to the appeal, including the letter or letters of claim in response to which the decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered relevant to the appeal.

Within the same time above specified the contracting officer shall furnish the appellant a copy of each document he transmits to the Board, except those in subparagraph (a)(2) above. As to the latter, a list furnished appellant indicating specific contractual documents transmitted will suffice.

(b) *Duties of the Appellant*— Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, the appellant shall transmit to the Board any documents not contained therein which he considers relevant to the appeal, and furnish two copies of such documents to the government trial attorney.

(c) *Organization of Appeal File*— Documents in the appeal file may be originals or legible facsimiles or authenticated copies, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.

(d) *Lengthy Documents*— Upon request by either party, the Board may waive the requirement to furnish to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file when inclusion would be burdensome. At the time a party files with the Board a document as to which

such a waiver has been granted he shall notify the other party that the document or a copy is available for inspection at the offices of the Board or of the party filing same.

(e) *Status of Documents in Appeal File*— Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision. However, a party may object, for reasons stated, to consideration of a particular document or documents reasonably in advance of hearing or, if there is no hearing, of settling the record. If such objection is made, the Board shall remove the document or documents from the appeal file and permit the party offering the document to move its admission as evidence in accordance with rules 13 and 20.

(f) Notwithstanding the foregoing, the filing of the rule 4 (a) and (b) documents may be dispensed with by the Board either upon request of the appellant in his notice of appeal or thereafter upon stipulation of the parties.

5. *Motions.* (a) Any motion addressed to the jurisdiction of the Board shall be promptly filed. Hearing on the motion shall be afforded on application of either party. However, the Board may defer its decision on the motion pending hearing on both the merits and the motion. The Board shall have the right at any time and on its own initiative to raise the issue of its jurisdiction to proceed with a particular case, and shall do so by an appropriate order, affording the parties an opportunity to be heard thereon.

(b) The Board may entertain and rule upon other appropriate motions.

6. *Pleadings*—(a) *Appellant*— Within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board an original and two copies of a complaint setting forth simple, concise and direct statements of each of its claims. Appellant shall also set forth the basis, with appropriate reference to contract provisions, of each claim and the dollar amount claimed, to the extent known. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form is required. Upon receipt of the complaint, the Board shall serve a copy of it upon the Government. Should the complaint not be received within 30 days, appellant's claim and appeal may, if in the opinion of the Board the issues before the Board are sufficiently defined, be deemed to set forth its complaint and the Government shall be so notified.

(b) *Government*— Within 30 days from receipt of the complaint, or the aforesaid notice from the Board, the Government shall prepare and file with the Board an original and two copies of an answer thereto. The answer shall set forth simple, concise and direct statements of Government's defenses to each claim asserted by appellant, including any affirmative defenses available. Upon receipt of the answer, the Board shall serve a copy upon appellant. Should the answer not be received within 30 days, the Board may, in its discretion, enter a general denial on behalf of the Government, and the appellant shall be so notified.

(c) A party who intends to raise an issue concerning the law of a foreign country shall give notice in his pleadings or other reasonable written notice. The Board, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under Rules 11, 13 or 20. The determination of foreign law shall be treated as a ruling on a question of law.

7. *Amendments of Pleadings or Record.* The Board upon its own initiative or upon application by a party may order a party to make a more definite statement of the complaint or answer, or to reply to an answer. The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend its pleading upon conditions fair to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings, are tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised therein. In such instances, motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings, it may be admitted within the proper scope of the appeal, provided, however, that the objecting party may be granted a continuance if necessary to enable it to meet such evidence.

8. *Hearing Election.* After filing of the Government's answer or notice from the Board that it has entered a general denial on behalf of the Government, each party shall advise whether it desires a hearing as prescribed in Rules 17 through 25, or whether it elects to submit its case on the record without a hearing, as prescribed in Rule 11.

9. *Prehearing Briefs.* Based on an examination of the pleadings, and its determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected pursuant to Rule 8. If the Board does not require prehearing briefs either party may, in its discretion and upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party as previously arranged.

10. *Prehearing or Presubmission Conference.* (a) Whether the case is to be submitted pursuant to Rule 11, or heard pursuant to Rules 17 through 25, the Board may upon its own initiative, or upon the application of either party, arrange a telephone conference or call upon the parties to appear before an administrative judge or examiner of the Board for a conference to consider:

(1) Simplification, clarification, or severing of the issues;

(2) The possibility of obtaining stipulations, admissions, agreements and rulings on admissibility of docments, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;

(3) Agreements and rulings to facilitate discovery;

(4) Limitation of the number of expert witnesses, or avoidance of similar cumulative evidence;

(5) The possibility of agreement disposing of any or all of the issues in dispute; and

(6) Such other matters as may aid in the disposition of the appeal.

(b) The administrative judge or examiner of the Board shall make such rulings and orders as may be appropriate to aid in the disposition of the appeal. The results of pretrial conferences, including any rulings and orders, shall be reduced to writing by the administrative judge or examiner and this writing shall thereater constitute a part of the record.

11. *Submission Without a Hearing.* Either party may elect to waive a hearing and to submit its case upon the record before the Board, as settled pursuant to Rule 13. Submission of a case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submissions to be supplemented by oral argument (transcribed if requested), and by briefs arranged in accordance with Rule 23.

12. *Optional SMALL CLAIMS (EXPEDITED) and ACCELERATED Procedures.* These procedures are available solely at the election of the appellant.

12.1 *Elections to Utilize SMALL CLAIMS (EXPEDITED) and ACCELERATED Procedures.* (a) In appeals where the amount in dispute is $10,000 or less, the appellant may elect to have the appeal processed under a SMALL CLAIMS (EXPEDITED) procedure requiring decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in section 12.2 of this Rule. An appellant may elect the ACCELERATED procedure rather than the SMALL CLAIMS (EXPEDITED) procedure for any appeal eligible for the SMALL CLAIMS (EXPEDITED) procedure.

(b) In appeals where the amount in dispute is $50,000 or less, the appellant may elect to have the appeal processed under an ACCELERATED procedure requiring decision of the appeal, whenever possible, within 180 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in section 12.3 of this Rule.

(c) The appellant's election of either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure may be made by written notice within 60 days after receipt of notice of docketing, unless such period is extended by the Board for good cause. The election may not be withdrawn except with permission of the Board and for good cause.

12.2 *The Small Claims (Expedited) Procedure.* (a) In cases proceeding under the SMALL CLAIMS (EXPEDITED) procedure, the following time periods shall apply:

(1) Within 10 days from the Government's first receipt from either the appellant or the Board of a copy of the appellant's notice of election of the SMALL CLAIMS (EXPEDITED) procedure, the Government shall send the Board a copy of the contract, the contracting officer's final decision, and the appellant's claim letter or letters, if any; remaining documents required under Rule 4 shall be submitted in accordance with times specified in that rule unless the Board otherwise directs.

(2) Within 15 days after the Board has acknowledged receipt of appellant's notice of election, the assigned administrative judge shall take the following actions, if feasible, in an informal meeting or a telephone conference with both parties: (i) Identify and simplify the issues; (ii) establish a simplified procedure appropriate to the particular appeal involved; (iii) determine whether either party wants a hearing, and if so, fix a time and place therefor; (iv) require the Government to furnish all the additional documents relevant to the appeal; and (v) establish an expedited schedule for resolution of the appeal.

(b) Pleadings, discovery, and other prehearing activity will be allowed only as consistent with the requirement to conduct the hearing on the date scheduled, or if no hearing is scheduled, to close the record on a date that will allow decisions within the 120-day limit. The Board, in its discretion, may impose shortened time periods for any actions prescribed or allowed under these rules, as necessary to enable the Board to decide the appeal within the 120-day limit, allowing whatever time, up to 30 days, that the Board considers necessary for the preparation of the decision after closing the record and the filing of briefs, if any.

(c) Written decision by the Board in cases processed under the SMALL CLAIMS (EXPEDITED) procedure will be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single administrative judge. If there has been a hearing, the administrative judge presiding at the hearing may, in the judge's discretion, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes and to establish the starting date for the period for filing a motion for reconsideration under rule 29.

(d) A decision against the Government or the contractor shall have no value as precedent, and in the absence of fraud shall be final and conclusive and may not be appealed or set aside.

12.3 *The Accelerated Procedure.* (a) In cases proceeding under the Accelerated procedure, the parties are encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs. The Board, in its discretion, may shorten time periods prescribed or allowed elsewhere in these rules, including rule 4, as necessary to enable the Board to decide the appeal within 180 days after the Board has received the appellant's notice of election of the ACCELERATED procedure, and may reserve 30 days for preparation of the decision.

(b) Written decision by the Board in cases processed under the ACCELERATED procedure will normally be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single administrative judge with the concurrence of a vice chairman, or by a majority among these two and the chairman in case of disagreement. Alternatively, in cases where the amount in dispute is $10,000 or less as to which the ACCELERATED procedure has been elected and in which there has been a hearing, the single administrative judge presiding at the hearing may, with the concurrence of both parties, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes, and to establish the starting date for the period of filing a motion for reconsideration under Rule 29.

12.4 *Motions for Reconsideration in Rule 12 Cases.* Motions for Reconsideration of cases decided under either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure need not be decided within the original 120-day or 180-day limit, but all such motions shall be processed and decided rapidly so as to fulfill the intent of this Rule.

13. *Settling the Record.* (a) The record upon which the Board's decision will be rendered consists of the documents furnished under Rules 4 and 12, to the extent admitted in evidence, and the following items, if any: pleadings, prehearing conference memoranda or orders, prehearing briefs, depositions or interrogatories received in evidence, admissions, stipulations, transcripts of conferences and hearings, hearing exhibits, posthearing briefs, and documents which the Board has specifically designated be made a part of the record. The record will, at all reasonable times, be available for inspection by the parties at the office of the Board.

(b) Except as the Board may otherwise order in its discretion, no proof shall be received in evidence after completion of an oral hearing or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(c) The weight to be attached to any evidence of record will rest within the sound discretion of the Board. The Board may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

14. *Discovery—Depositions*—(a) *General Policy and Protective Orders*— The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may make any order required to protect a party or person from annoyance, embarrassment, or undue burden or expense. Those orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(b) *When Depositions Permitted*—After an appeal has been docketed and complaint filed, the parties may mutually agree to, or the Board may, upon application of either party, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(c) *Orders on Depositions*—The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the Board.

(d) *Use as Evidence*—No testimony taken by depositions shall be considered as part of the evidence in the hearing of an appeal until

such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent is present and can testify at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the deponent given at the hearing. In cases submitted on the record, the Board may, in its discretion, receive depositions to supplement the record.

(e) *Expenses*—Each party shall bear its own expenses associated with the taking of any deposition.

(f) *Subpoenas*—Where appropriate, a party may request the issuance of a subpoena under the provisions of Rule 21.

15. *Interrogatories to Parties, Admission of Facts, and Production and Inspection of Documents.* After an appeal has been docketed and complaint filed with the Board, a party may serve on the other party: (a) Written interrogatories to be answered separately in writing, signed under oath and answered or objected to within 45 days after service; (b) a request for the admission of specified facts and/or the authenticity of any documents, to be answered or objected to within 45 days after service; the factual statements and the authenticity of the documents to be deemed admitted upon failure of a party to respond to the request; and (c) a request for the production, inspection and copying of any documents or objects not privileged, which reasonably may lead to the discovery of admissible evidence, to be answered or objected to within 45 days after service. The Board may allow a shorter or longer time. Any discovery engaged in under this Rule shall be subject to the provisions of Rule 14(a) with respect to general policy and protective orders, and of Rule 35 with respect to sanctions.

16. *Service of Papers Other Than Subpoenas.* Papers shall be served personally or by mail, addressed to the party upon whom service is to be made. Copies of complaints, answers and briefs shall be filed directly with the Board. The party filing any other paper with the Board shall send a copy thereof to the opposing party, noting on the paper filed with the Board that a copy has been so furnished. Subpoenas shall be served as provided in Rule 21.

Hearings

17. *Where and When Held.* Hearings will be held at such places determined by the Board to best serve the interests of the parties and the Board. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals, Rule 12 requirements, and other pertinent factors. On request or motion by either party and for good cause, the Board may, in its discretion, adjust the date of a hearing.

18. *Notice of Hearings.* The parties shall be given at least 15 days notice of the time and place set for hearings. In scheduling hearings, the Board will consider the desires of the parties and the requirement for just and inexpensive determination of appeals without unnecessary delay. Notices of hearings shall be promptly acknowledged by the parties.

19. *Unexcused Absence of a Party.* The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in Rule 11.

20. *Hearings: Nature, Examination of Witnesses*—(a) *Nature of Hearings*—Hearings shall be as informal as may be reasonable and appropriate under the circumstances. Appellant and the Government may offer such evidence as they deem appropriate and as would be admissible under the Federal Rules of Evidence or in the sound discretion of the presiding administrative judge or examiner. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may require evidence in addition to that offered by the parties.

(b) *Examination of Witnesses*—Witnesses before the Board will be examined orally under oath or affirmation, unless the presiding administrative judge or examiner shall otherwise order. If the testimony of a witness is not given under oath, the Board may advise the witness that his statements may be subject to the provisions of title 18, United States Code, sections 287 and 1001, and any other provision of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof.

21. *Subpoenas*—(a) *General*— Upon written request of either party filed with the recorder, or on his own initiative, the administrative judge to whom a case is assigned or who is otherwise designated by the chairman may issue a subpoena requiring:

(i) Testimony at a deposition—the deposing of a witness in the city or county where he resides or is employed or transacts his business in person, or at another location convenient for him that is specifically determined by the Board;

(ii) Testimony at a hearing—the attendance of a witness for the purpose of taking testimony at a hearing; and

(iii) Production of books and papers—in addition to (i) or (ii), the production by the witness at the deposition or hearing of books and papers designated in the subpoena.

(b) *Voluntary Cooperation*—Each party is expected (i) to cooperate and make available witnesses and evidence under its control as

requested by the other party, without issuance of a subpoena, and (ii) to secure voluntary attendance of desired third-party witnesses and production of desired third-party books, papers, documents, or tangible things whenever possible.

(c) *Requests for Subpoenas*—(1) A request for subpoena shall normally be filed at least:

(i) 15 days before a scheduled deposition where the attendance of a witness at a deposition is sought; or

(ii) 30 days before a scheduled hearing where the attendance of a witness at a hearing is sought.

In its discretion the Board may honor requests for subpoenas not made within these time limitations.

(2) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any books and papers sought.

(d) *Requests to Quash or Modify*— Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the Board may (i) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (ii) require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books and papers. Where circumstances require, the Board may act upon such a request at any time after a copy has been served upon the opposing party.

(e) *Form; Issuance*—(1) Every subpoena shall state the name of the Board and the title of the appeal, and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified books and papers at a time and place therein specified. In issuing a subpoena to a requesting party, the administrative judge shall sign the subpoena and may, in his discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) Where the witness is located in a foreign country, a letter rogatory or subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781–1784.

(f) *Service*—(1) The party requesting issuance of a subpoena shall arrange for service.

(2) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place. A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law; however, where the subpoena is issued on behalf of the Government, money payments need not be tendered in advance of attendance.

(3) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Board as a sufficient ground for striking the testimony of the witness and the books or papers the witness has produced.

(g) *Contumacy or Refusal to Obey a Subpoena*— In case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States District Court, the Board will apply to the Court through the Attorney General of the United States for an order requiring the person to appear before the Board or a member thereof to give testimony or produce evidence or both. Any failure of any such person to obey the order of the Court may be punished by the Court as a contempt thereof.

22. *Copies of Papers.* When books, records, papers, or documents have been received in evidence, a true copy thereof or of such part thereof as may be material or relevant may be substituted therefor, during the hearing or at the conclusion thereof.

23. *Post-Hearing Briefs.* Post-hearing briefs may be submitted upon such terms as may be directed by the presiding administrative judge or examiner at the conclusion of the hearing.

24. *Transcript of Proceedings.* Testimony and argument at hearings shall be reported verbatim, unless the Board otherwise orders. Waiver of transcript may be especially suitable for hearings under Rule 12.2. Transcripts of the proceedings shall be supplied to the parties at such rates as may be established by contract between the Board and the reporter, provided that ordinary copy of transcript shall be supplied to the appellant at an amount no greater than the cost of duplication.

25. *Withdrawal of Exhibits.* After a decision has become final the Board may, upon request and after notice to the other party, in its discretion permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitition of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such withdrawal.

Representation

26. *The Appellant.* An individual appellant may appear before the Board in person, a corporation by one of its officers; and a partnership or joint venture by one of its members; or any of these by an attorney at law duly licensed in any state, commonwealth, territory, the District of Columbia, or in a

foreign country. An attorney representing an appellant shall file a written notice of appearance with the Board.

27. *The Government.* Government counsel may, in accordance with their authority, represent the interest of the Government before the Board. They shall file notices of appearance with the Board, and notice thereof will be given appellant or appellant's attorney in the form specified by the Board from time to time.

Decisions

28. *Decisions.* (a) Decisions of the Board will be made in writing and authenticated copies of the decision will be forwarded simultaneously to both parties. The rules of the Board and all final orders and decisions (except those required for good cause to be held confidential and not cited as precedents) shall be open for public inspection at the offices of the Board. Decisions of the Board will be made solely upon the record, as described in Rule 13.

(b) Any monetary award to a contractor by the Board shall be promptly paid in accordance with the procedures provided by section 1302 of the Act of July 27, 1956 (70 Stat. 694, as amended; 31 U.S.C. 724a). To assure prompt payment the Recorder will forward a waiver form to each party with the decision. If the parties do not contemplate an appeal or motion for reconsideration, they will execute waivers which so state, and return them to the Recorder. The Recorder will forward the waivers and a certified copy of the award decision to the General Accounting Office for certification for payment.

Motion for Reconsideration

29. *Motion for Reconsideration.* A motion for reconsideration may be filed by either party. It shall set forth specifically the grounds relied upon to sustain the motion. The motion shall be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion.

Suspensions, Dismissals and Defaults: Remands

30. *Suspensions; Dismissal Without Prejudice.* The Board may suspend the proceedings by agreement of counsel for settlement discussions, or for good cause shown. In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. Where the suspension has continued, or may continue, for an inordinate length of time, the Board may, in its discretion, dismiss such appeals from its docket without prejudice to their restoration when the cause of suspension has been removed. Unless either party or the Board acts within three years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed with prejudice.

31. *Dismissal or Default for Failure to Prosecute or Defend.* Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may, in the case of a default by the appellant, issue an order to show cause why the appeal should not be dismissed or, in the case of a default by the Government, issue an order to show cause why the Board should not act thereon pursuant to Rule 35. If good cause is not shown, the Board may take appropriate action.

32. *Remand from Court.* Whenever any court remands a case to the Board for further proceedings, each of the parties shall, within 20 days of such remand, submit a report to the Board recommending procedures to be followed so as to comply with the court's order. The Board shall consider the reports and enter special orders governing the handling of the remanded case. To the extent the court's directive and time limitations permit, such orders shall conform to these rules.

Time, Computation and Extensions

33. *Time, Computation and Extensions.* (a) Where possible, procedural actions should be taken in less time than the maximum time allowed. Where appropriate and justified, however, extensions of time will be granted. All requests for extensions of time shall be in writing.

(b) In computing any period of time, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday, in which event the period shall run to the end of the next business day.

Ex Parte Communications

34. *Ex parte Communications.* No member of the Board or the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal, submit to the Board or the Board's staff, off the record, any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members or to ex parte communications concerning the Board's administrative functions or procedures.

Sanctions

35. *Sanctions.* If any party fails or refuses to obey an order issued by the Board, the Board may then make such order as it considers

necessary to the just and expeditious conduct of the appeal.

Effective Date and Applicability

36. *Effective Date.* These rules shall apply (i) mandatorily, to all appeals relating to contracts entered into on or after 1 March 1979, and (ii) at the contractor's election, to appeals relating to earlier contracts, with respect to claims pending before the contracting officer on 1 March 1979 or initiated thereafter.

Pursuant to the Charter of the Armed Services Board of Contract Appeals, the attached rules are hereby approved for use and application to appeals to the Armed Services Board of Contract Appeals under the Contract Disputes Act of 1978.

(signed) William J. Perry (30 JUN 1980),
Under Secretary of Defense for Research and Engineering.
(signed) Percy A. Pierre,
Assistant Secretary of the Army (Research, Development and Acquisition).
(signed) J.A. Doyle,
Assistant Secretary of the Navy (Manpower, Reserve Affairs and Logistics).
(signed) Eugene H. Kopf,
(Acting) Assistant Secretary of the Air Force (Research, Development and Logistics).

[56 FR 36572, July 31, 1991, as amended at 58 FR 37868, July 14, 1993]

APPENDIX B—COORDINATED ACQUISITION ASSIGNMENTS

Part 1—Army Assignments

Part 2—Navy Assignments

Part 3—Air Force Assignments

Part 4—Defense Logistics Agency Assignments

Part 5—Defense Special Weapons Agency Assignments

Part 6—General Services Administration Assignments

AUTHORITY; 41 U.S.C. 421 and 48 CFR chapter 1.

PART 1—ARMY ASSIGNMENTS

Federal supply class code	Commodity
	Electronic Equipment.
	Each department is assigned acquisition responsibility for those items which the department either designed or for which it sponsored development. See FSC 5821 under Navy listings for assignment of certain commercially developed radio sets (i.e., developed without the use of Government funds).
1005 P [1]	Guns, through 30mm.
	This partial assignment applies to guns, through 30mm, and parts and equipment therefor, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to Navy ordnance type guns; MK 11 and MK 12, 20mm gun; and aircraft gun mounts.
1010 P [1]	Guns, over 30mm up to 75mm.
	This partial assignment applies to guns, over 30mm and up to 75mm, and parts and equipment therefor, as listed in Department of the Army Supply Manuals/Catalogs. It does not apply to Naval ordnance type guns and aircraft gun mounts.
1015 P [1]	Guns, 75mm through 125mm.
	This partial assignment applies to guns, 75mm through 125mm, and parts and equipment therefor, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to Naval ordnance type guns.
1020 P [1]	Guns over 125mm through 150mm.
1025 P [1]	Guns over 150mm through 200mm.
1030 P [1]	Guns over 200mm through 300mm.
1035 P [1]	Guns over 300mm.
	These partial assignments apply to guns, over 125mm, and parts and equipment therefor, as listed in Department of Army Supply Manuals/ Catalogs. They do not apply to Naval ordnance type guns.
1040	Chemical Weapons and Equipment.
1055 P [1]	Launchers, Rocket and Pyrotechnic.
	This partial assignment applies to launchers, rocket and pyrotechnic, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to Naval ordnance type and airborne type, with the exception of 2.75 inch rocket launchers which are included in this partial FSC assignment to the Department of the Army.
1090 P	Assemblies Interchangeable Between Weapons in Two or More Classes.
	This partial assignment applies to the following items:

NOTE: (''P'' after the FSC number indicates a partial FSC assignment)

	National stock number nomenclature.
	1090–563–7232 Staff Section, Class.
	1090–699–0633 Staff Section.
	1090–796–8760 Power Supply.
	1090–885–8451 Wrench Corrector.
	1090–986–9707 Reticle Assembly.
1095 P [1]	Miscellaneous Weapons.
	This partial assignment applies to miscellaneous weapons, and parts and equipment therefor, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to Naval ordnance type; line throwing guns (which are under DoD Coordinated Acquisition assignment to the Department of the Navy); and aircraft type miscellaneous weapons.
1210 P [1]	Fire Control Directors.
1220 P [1]	Fire Control Computing Sights and Devices.
1230 P [1]	Fire Control Systems, Complete.
1240 P [1]	Optical Sighting and Ranging Equipment.
1250 P [1]	Fire Control Stabilizing Mechanisms.
1260 P [1]	Fire Control Designating and Indicating Equipment.
1265 P [1]	Fire Control Transmitting and Receiving Equipment, Except Airborne.

Federal supply class code	Commodity
1285 P [1]	Fire Control Radar Equipment, Except Airborne.
1290 P [1]	Miscellaneous Fire Control Equipment. The above nine partial FSC assignments apply to fire control equipment, as listed in Department of the Army Supply Manuals/Catalogs. They do not apply to Naval ordnance type and aircraft type.
1305 P [1]	Ammunition, through 30mm. This partial assignment applies to ammunition through 30mm as listed in Department of Army Supply Manuals/Catalogs. It does not apply to Naval ordnance type and ammunition for the MK 11 and MK 12, 20mm gun.
1310 P [1]	Ammunition, over 30mm up to 75mm. This partial assignment applies to ammunition, over 30mm up to 75mm, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to Naval ordnance type and to 40mm ammunition (which is under DoD Coordinated Acquisition assignment to the Navy). The Army is responsible for the acquisition of fillers and the loading, assembling, and packing of toxicological, incapacitating riot control, smoke and incendiary munitions.
1315 P [1]	Ammunition, 75mm through 125mm. This partial assignment applies to ammunition, 75mm through 125mm, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to Naval ordnance type. The Army is responsible for the acquisition of fillers and the loading, assembling, and packing of toxicological, incapacitating riot control, smoke and incendiary munitions.
1320 P [1]	Ammunition, over 125mm. This partial assignment applies to ammunition over 125mm, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to Naval ordnance type. The Army is responsible for the acquisition of fillers and the loading, assembling, and packing of toxicological, incapacitating riot control, smoke and incendiary munitions.
1325 P	Bombs. This partial assignment applies to bombs as listed in Department of Army Supply Manuals/Catalogs. It does not apply to Navy assigned bombs as shown in list of assignments to the Navy; however, the Department of the Army is responsible for the acquisition of fillers and the loading, assembling, and packing of toxicological, incapacitating riot control, smoke and incendiary munitions, and for other loading, assembling, and packing in excess of Navy owned capacity.
1330	Grenades.
1340 P	Rockets and Rocket Ammunition. This partial assignment applies to: 66mm Rocket, HEAT, M72. 2.75'' Rocket FFAR, Service and Practice. Heads MK5 and Mods (HEAT). HE, M151. HE, XM229 (17 lb Warhead) HE, XM157 (Spotting Red). HE, XM158 (Spotting Yellow). MK61 Practice (5 lb Slug). XM230 Practice (10 lb). Motors MK4 and Mods (High Performance Aircraft). MK40 and Mods (Low Performance Aircraft). 3.5 inch Rocket Heat, M35. Practice, M36. Smoke, WP, M30. 4.5 inch Motor, Drill, M24. HE, M32. Practice, M33. Incendiary and toxicological rockets, as listed in Army Supply Bulletins. It does not apply to Navy assigned rockets as shown in the list of assignments to the Navy. However, the Department of the Army is responsible for acquisition of filler and for filling of all smoke and toxicological rockets.
1345	Land Mines.
1365	Military Chemical Agents.
1370 P	Pyrotechnics. This partial assignment does not apply to shipboard and aircraft pyrotechnics.
1375 P	Demolition Materials. This partial assignment applies to Blasting Agents and supplies such as: Bangalore torpedo. Blocks, demolition. Caps, blasting, electric and non-electric. Charge, cratering. Charge, shaped and demolition. Chests, demolition platoon and squad. Cord detonating. Demolition equipment sets, with ancillary items. Detonators, all types. Dynamite. Firing devices. Fuze, safety. Kit, demolition. Lighter, fuse. Machine, blasting. Primer, percussion cap. It does not apply to Navy underwater demolition requirements.
1376 P	Bulk Explosives. This partial assignment applies to solid propellants and explosives such as: Ammonium Picrate (Explosive D) JAN–A–166A. Trinitrotoluene (TNT) MIL–T–248A. Tetryl JAN–T–339. Pantaerythrite Tetranitrate (PETN) JAN–P–387. RDX. Composition B. Composition B–3. Pentolite, 50. Composition C–3. Composition A–3. Composition A–4. Nitroguanidine (Picrate). It does not apply to production capacity for any of the above listed explosives at the U.S. Naval Propellant Plant, Indian Head, Maryland.
1377 P	Cartridge and Propellant Actuated Devices and Components. This partial assignment is reserved pending Services agreement as to items to be included in the assignment.
1380	Military Biological Agents.
1390 P [1]	Fuzes and Primers.

Federal supply class code	Commodity
	This partial assignment applies to Fuzes and Primers for Army assigned ammunition. It does not apply to Naval ordnance type, which is under DoD Coordinated Acquisition assignment to the Department of the Navy; and guided missile fuzes.
2210	Locomotives.
2220	Rail Cars.
2240	Locomotive and Rail Car Accessories and Components.
2250	Track Materials, Railroad.
2310 P	Passenger Motor Vehicles.
2320 P	Trucks and Truck Tractors.
	These two partial assignments apply to tactical vehicles and the following types of vehicles:
	Bus, convertible to ambulance.
	Truck, 4×4, convertible to ambulance
	Truck 4×4, dump, 9,000 GVW, with cut-down cab.
	These assignments do not apply to tracked landing vehicles which are not under DoD Coordinated Acquisition assignment, and airport crash rescue vehicles, which are under DoD Coordinated Acquisition assignment to the Department of the Air Force. With the exception of the types enumerated above, these assignments do not apply to commercial, non-tactical, passenger carrying vehicles and trucks which are assigned for DoD Coordinated Acquisition to the General Services Administration.
2330 P	Trailers.
	This partial assignment does not apply to two wheel lubrication trailers, two wheel steam cleaning trailers, and troop transporter semitrailers which are not under DoD Coordinated Acquisition assignment, and airport crash rescue trailer units which are under DoD Coordinated Acquisition assignment to the Department of the Air Force.
2340 P	Motorcycles, Motor Scooters, and Bicycles.
	This partial assignment does not apply to bicycles and tricycles.
2350	Tanks and Self-propelled Weapons.
2430	Tractors, Track Laying, High-Speed.
2510 P [2]	Vehicular Cab, Body, and Frame Structural Components.
2520 P [2]	Vehicular Power Transmission Components.
2530 P [2]	Vehicular Brake, Steering, Axle, Wheel, and Track Components.
2540 P [2]	Vehicular Furniture and Accessories.
2590 P [2]	Miscellaneous Vehicular Components.
2610	Tires and Tubes, Pneumatic, except Aircraft.
2630	Tires, solid and cushion.
2640	Tire Rebuilding and Tire and Tube Repair Materials.
2805 P [2]	Gasoline Reciprocating Engines, except Aircraft and Components.
2910 P [2]	Engine Fuel System Components, Nonaircraft.
2920 P [2]	Engine Electrical System
2930 P [2]	Engine Cooling System Components, Nonaircraft.
2940 P [2]	Engine Air and Oil Filters, Strainers and Cleaners, Nonaircraft.
2990 P [2]	Miscellaneous Engine Accessories, Nonaircraft.
4210 P	Fire Fighting Equipment.
	This partial assignment applies only to equipment developed by or under the sponsorship of the Department of the Army.
4230 P	Decontaminating and Impregnating Equipment.
	This partial assignment applies only to items peculiar to chemical warfare.
4240 P	Safety and Rescue Equipment.
	This partial assignment applies only to military respiratory protective equipment for chemical warfare.
5805 P	Telephone and Telegraph Equipment.
	This partial assignment applies only to military (wire) equipment, field type.
5815 P	Teletype and Facsimile Equipment.
	This partial assignment applies only to military (wire) equipment, field type.
5820 P	Radio and Television Communication Equipment, except Airborne.
	This partial assignment applies to nontactical, off-the-shelf, commercially available radio and television equipment and supplies used by the Armed Forces Radio and Television Stations including equipment and supplies used by the Armed Forces for closed TV circuit educational and training programs.
5830 P	Intercommunication and Public Address Systems; except Airborne.
	This partial assignment applies only to military (wire) equipment, field type.
6135 P	Batteries, Primary.
	This partial assignment applies to MIL type, dry cell batteries, only.
6625 P	Electrical and Electronic Properties Measuring and Testing Instruments.
	This partial assignment applies only to instruments for testing military (wire) equipment, field type.
6645 P	Time Measuring Instruments.
	This partial assignment applies to the following watches; aircraft instrument panel clocks; cases and spare parts therefor:
	Master navigation watches; pocket watches; stop watches; second setting wrist watches; wrist watches; athletic timers; aircraft clocks; aircraft panel clocks; mechanical aircraft clocks; navigation watch cases; pocket watch cases; watch holders; watch case assemblies and watch movements.
6660 P	Meteorological Instruments and Apparatus.
	Each department is assigned acquisition responsibility for those systems, instruments and end items in FSC 6660 which the department either designed or sponsored development. For purposes of this assignment, the developing department is the department which awarded the developmental contract, notwithstanding that other departments may have provided funds for the development.
6665 P	Hazard-Detecting Instruments and Apparatus.
	This partial assignment applies only to items peculiar to chemical warfare.
6695 P	Combination and Miscellaneous Instruments.
	This partial assignment applies to jewel bearings only.
6820 P	Dyes.
	This partial assignment applies only to items peculiar to chemical warfare.

Federal supply class code	Commodity
6910 P	Training Aids. This partial assignment applies only to items peculiar to Army assignments under weapons, fire control equipment, ammunition and explosives, and chemical and biological warfare.
6920 P	Armament Training Devices. This partial assignment applies to armament training devices as listed in Department of Army Catalogs SC 6910, ML/IL and SC 6920 ML/IL. It does not apply to clay pigeons in Department of Army Catalogs SC 6910, ML/IL and SC 6920 ML/IL. It does not apply to clay pigeons.
6940 P	Communication Training Devices. This partial assignment applies only to code training sets, code practice equipment, and other telephone and telegraph training devices.
8130 P	Reels and Spools. This partial assignment applies only to reels and spools for military (wire) equipment, field type.
8140 P	Ammunition Boxes, Packages, and Special Containers. This partial assignment applies only to boxes, packages, and containers peculiar to Army assignments under ammunitions, explosives, and chemical and biological warfare as listed in Department of Army Catalog SC 8140 IL and SC 8140 ML.

[1] For contracting purposes, Naval ordnance comprises all arms, armor, and armament for the Department of the Navy and includes all offensive and defensive weapons, together with their components, controlling devices and ammunition used in executing the Navy's mission in National Defense (except small arms and those items of aviation ordnance acquired from the Army).

[2] These partial FSC assignments apply only to repair parts peculiar to combat and tactical vehicles. In addition, the assignment in FSC 2805 applies to military standard engines 1.5 HP through 20 HP and parts peculiar therefor. Balance of these FSCs are assigned to the Defense Logistics Agency (Defense Construction Supply Center).

PART 2—NAVY ASSIGNMENTS

Federal supply class code	Commodity
	Electronic Equipment. Each department is assigned acquisition responsibility for those items which the department either designed or sponsored development. See FSC 5821 for assignment of certain commercially developed radio sets to the Department of the Navy (i.e., developed without the use of Government funds).
1095 P	Miscellaneous Weapons. This partial assignment applies to line throwing guns only.
1310 P	Ammunition, over 30mm up to 75mm. This partial assignment applies only to reels and spools for military.
1325 P	Bombs. This partial assignment applies to armor-piercing; depth bombs; externally suspended low drag bombs; and components and practice bombs therefor, as listed in Ord Pamphlets, and the MK 43, Target Detecting Device. The Department of the Army is responsible for the acquisition of fillers and the loading, assembling, and packing of toxicological, incapacitating riot control, smoke and incendiary munitions, and for other loading, assembling, and packing in excess of Navy-owned capacity.
1340 P	Rockets and Rocket Ammunition. This partial assignment applies to: Fuze, Rocket, V.T., MK93–0. 2.25 inch Rocket SCAR, Practice. Heads MK3 and Mods. Motors MK15 and Mods. MK16 and Mods. 5 inch Rocket HVAR, service and practice. Heads MK2 and Mods (common) MK6 and Mods (GP). MK4 and Mods (smoke) MK25 and Mods (ATAR). Motors MK10 and Mods. 5 inch Rocket FFAR service and practice. Heads MK24 and Mods (General Purposes). MK32 and Mods (Shaped Charged). MK26 and Mods (Illum). Motor MK16 and Mods. The Department of the Army is responsible for acquisition of filler and for filling of all smoke and toxicological rockets.
1390 P	Fuzes and Primers. This partial assignment applies to fuzes and primers for Navy assigned ammunition.
1550 P	Drones. This partial assignment applies only to Drone, Model BQM34E.
1905 P	Combat Ships and Landing Vessels. This partial assignment applies to landing vessels only.
1910 P	Transport Vessels, Passenger and Troop. This partial assignment applies to ferryboats only.
1920	Fishing Vessels.
1925	Special Service Vessels.
1930	Barges and Lighters, Cargo.
1935 P	Barges and Lighters, Special Purpose. This partial assignment does not apply to derricks, pile drivers, rock cutters, concrete mixing plants, mechanical bank grader barges, other bank revetment barges, and barge power plants.
1940	Small Craft.
1945 P	Pontoons and Floating Docks. This partial assignment applies only to Naval Facilities Engineering Command type pontoons.
1950	Floating Drydocks.
1990 P	Miscellaneous Vessels. This partial assignment applies to commercial sailing vessels only.
2010	Ship and Boat Propulsion Components.
2020	Rigging and Rigging Gear.
2030	Deck Machinery.
2040	Marine Hardware and Hull Items.

NOTE: (''P'' after the FSC number indicates a partial FSC assignment).

Federal supply class code	Commodity
2060	Commercial Fishing Equipment.
2090	Miscellaneous Ship and Marine Equipment.
2820 P	Steam Engines, Reciprocating and Components. This partial assignment applies to marine main propulsion steam engines only.
2825 P	Steam Turbines and Components. This partial assignment applies to marine steam turbines only.
4210 P	Fire Fighting Equipment. This partial assignment applies only to fire fighting equipment developed by or under the sponsorship of the Department of Navy.
4410 P	Industrial Boilers. This partial assignment applies only to boilers for use aboard those ships assigned to the Navy for coordinated acquisition.
4420 P	Heat Exchangers and Steam Condensers. This partial assignment applies only to heat exchangers for use aboard those ships assigned to the Navy for coordinated acquisition.
4925 P	Ammunition Maintenance and Repair Shop Specialized Equipment. This partial assignment applies to sets, kits, and outfits of tools and equipment for explosive ordnance as defined in military service regulations and documents.
5821 P	Radio and Television Communication Equipment, Airborne. This partial assignment applies only to the following commercially developed radio sets. (The term ''commercially developed'' means that no Government funds were provided for development purposes.) HF–101, 102, 103, 104, 105, 106, 107, 108, 109, 111, 113, ARC–94, 102, 105, 110, 112, 119, 120; MRC–95, 108; VC–102, 104, 105, 106, 109, 110; and components of the foregoing including the 490T antenna coupler.
6125 P	Converters, Electrical, Rotating. This partial assignment applies only to motor-generated sets for use aboard ships assigned to the Navy for coordinated acquisition.
6320 P	Shipboard Alarm and Signal System. This partial assignment applies only to alarm systems, fire alarm systems, indicating systems, telegraph systems (signal and signaling) (less electronic type) for use aboard ships assigned to the Navy for coordinated acquisition.
6605 P	Navigational Instruments. This partial assignment applies only to lifeboat and raft compasses, aircraft sextants, hand leads (soundings), lead reels, sounding machines and pelorus stands for use aboard ships assigned to the Navy for coordinated acquisition.
6645 P	Time Measuring Instruments. This partial assignment applies to the following instruments, cases, and spare parts therefor: Chronometers including gimbal, padded and make break circuit. Clocks, alarm, boat, deck, direct reading, electrical, floor, interval timer, marine, mechanical, master control, master program, master regulating, mechanical message center, nurses, program, shelf, stop, wall, watchman's. Counters, time period. Meters, engine running time, hour recording, and electrical time totalizing. Timers; bombing, engine hours, sequential, stop, and program. Program control instrument. Cases; chronometer, including gimbal and padded, chronometer carrying; makebreak circuit chronometer. Cans, chronometer shipping and storage. Clock keys; clock movements, clock motors.
6650 P	Optical Instruments. This partial assignment applies only to stands, telescope, for use aboard ships assigned to the Navy for coordinated acquisition.
6660 P	Meteorological Instruments and Apparatus. Each department is assigned acquisition responsibility for those systems, instruments, and end items in FSC 6660 for which the department either designed or sponsored development. For purposes of this assignment, the developing department is the department which awarded the developmental contract, notwithstanding that other departments may have provided funds for the development.
6665 P	Hazard-Detecting Instruments and Apparatus. This partial assignment applies only to hazard determining safety devices, for use aboard ships assigned to the Navy for coordinated acquisition.
8140 P	Ammunition Boxes, Packages, and Special Containers. This partial assignment applies only to boxes, packages, and containers for 40mm ammunition.

PART 3—AIR FORCE ASSIGNMENTS

Federal supply class code	Commodity
	Electronic Equipment. Each department is assigned acquisition responsibility for those items which the department either designed or sponsored development. See FSC 5821 under Navy listing for assignment of certain commercially developed radio sets (i.e., developed without the use of Government funds).
1550 P	Drones. This partial assignment applies only to the following model drones: Model 147. Model 154. BQM 34A. MQM 34D.
2320 P	Trucks and Truck Tractors. This partial assignment applies only to airport crash rescue vehicles.
2330 P	Trailers. This partial assignment applies only to airport crash rescue trailer units.
4210 P	Fire Fighting Equipment. This partial assignment applies only to fire fighting equipment developed by or under the sponsorship of the Department of the Air Force.
6660 P	Meteorological Instruments and Apparatus.

Federal supply class code	Commodity
	Each department is assigned acquisition responsibility for those systems, instruments, and end items in FSC 6660 for which the department either designed or sponsored development. The developing department is the department which awarded the developmental contract, notwithstanding that other departments may have provided funds for the development.
6710 P [1]	Cameras, Motion Picture. This partial assignment does not apply to submarine periscope and underwater cameras.
6720 P [1]	Cameras, Still Picture. This partial assignment does not apply to submarine periscope and underwater cameras.
6730 P [1]	Photographic Projection Equipment. This partial assignment does not apply to 35mm theater projectors.
6740 [1]	Photographic Developing and Finishing Equipment.
6760 [1]	Photographic Equipment and Accessories.
6780 [1]	Photographic Sets, Kits, and Outfits.
8820 P	Live Animals Not Raised for Food. This partial assignment applies only to the following types of working dogs: Scout. Sentry. Patrol. Mine/tunnel. Tracker. Detector-narcotic/contraband. Sledge. Bloodhound. Water dog. Patrol/detector.

[1] This partial FSC assignment does not apply to photographic equipment controlled by the Congressional Joint Committee on Printing and Micro-Film Equipment and Supplies.

PART 4—DEFENSE LOGISTICS AGENCY ASSIGNMENTS

Federal supply class code	Commodity	DLA center [6]
2230	Right of Way Construction and Maintenance Equipment, Railroad.	DCSC
2410	Tractor, Full Track, Low-Speed.	DCSC
2420	Tractor, Wheeled	DCSC
2510 P [2]	Vehicular Cab, Body, and Frame, Structural Components.	DCSC
2520 P [2]	Vehicular Power Transmission Components.	DCSC
2530 P [2]	Vehicular Brake, Steering, Axle, Wheel, and Track Components.	DCSC
2540 P [2]	Vehicular Furniture and Accessories.	DCSC
2590 P [2]	Miscellaneous Vehicular Components.	DCSC
2805 P [2]	Gasoline Reciprocating Engines, Except Aircraft; and Components.	DCSC
2815	Diesel Engines and Components.	DCSC
2895	Miscellaneous Engines and Components.	DCSC
2910 P [2]	Engine Fuel System Components, Nonaircraft.	DCSC
2920 P [2]	Engine Electrical System Components, Nonaircraft.	DCSC
2930 P [2]	Engine Cooling System Components, Nonaircraft.	DCSC
NOTE: (''P'' after the FSC number indicates a partial FSC assignment)		
2940 P [2]	Engine Air and Oil Filters, Strainers and Cleaners, Nonaircraft.	DCSC
2990 P [2]	Miscellaneous Engine Accessories, Nonaircraft.	DCSC
3020	Gears, Pulleys, Sprockets and Transmission Chain.	DCSC
3030	Belting, Drive Belts, Fan Belts, and Accessories.	DCSC
3040	Miscellaneous Power Transmission Equipment.	DCSC
3110	Bearings, Antifriction, Unmounted.	DISC
3120	Bearings, Plain Unmounted	DISC
3130	Bearings, Mounted	DISC
3210	Sawmill and Planing Mill Machinery.	DGSC
3220	Woodworking Machines	DGSC
3230	Tools and Attachments for Woodworking Machinery.	DGSC
3405	Saws and Filing Machines	DGSC
3408	Machining Centers and Way-Type Machines.	DGSC
3410	Electrical and Ultrasonic Erosion Machines.	DGSC
3411	Boring Machines	DGSC
3412	Broaching Machines	DGSC
3413	Drilling and Tapping Machines	DGSC
3414	Gear Cutting and Finishing Machines.	DGSC
3415	Grinding Machines	DGSC
3416	Lathes	DGSC
3417	Milling Machines	DGSC
3418	Planers and Shapers	DGSC
3419	Miscellaneous Machine Tools	DGSC
3422	Rolling Mills and Drawing Machines.	DGSC
3424	Metal Heat Treating Equipment.	DGSC
3426	Metal Finishing Equipment	DGSC
3431	Electric Arc Welding Equipment.	DGSC
3432	Electric Resistance Welding Equipment.	DGSC
3433	Gas Welding, Heat Cutting & Metalizing Equipment.	DGSC
3436	Welding Positioners and Manipulators.	DGSC
3438	Miscellaneous Welding Equipment.	DGSC
3439	Miscellaneous Welding, Soldering and Brazing Supplies and Accessories.	DGSC
3441	Bending and Forming Machines.	DGSC
3442	Hydraulic and Pneumatic Presses, Power Driven.	DGSC
3443	Mechanical Presses, Power Driven.	DGSC
3444	Manual Presses	DGSC
3445	Punching and Shearing Machines.	DGSC

Federal supply class code	Commodity	DLA center[6]
3446	Forging Machinery and Hammers.	DGSC
3447	Wire and Metal Ribbon Forming Machinery.	DGSC
3448	Riveting Machines	DGSC
3449	Misc. Secondary Metal Forming and Cutting Machines.	DGSC
3450	Machine Tools, Portable	DGSC
3455	Cutting Tools for Machine Tools.	DGSC
3456	Cutting and Forming Tools for Secondary Metal Working Machines.	DGSC
3460	Machine Tool Accessories	DGSC
3461	Accessories for Secondary Metal Working Machinery.	DGSC
3465	Production Jigs, Fixtures and Templates.	DGSC
3470	Machine Shop Sets, Kits, and Outfits.	DGSC
3510	Laundry and Dry Cleaning Equipment.	DGSC
3520	Shoe Repairing Equipment	DGSC
3530	Industrial Sewing Machines & Mobile Textile Repair Shops.	DGSC
3610	Printing, Duplicating, and Bookbinding Equipment.	DGSC
3611 P[9]	Industrial Marking Machines	DGSC
3620 P[9]	Rubber and Plastics Working Machinery.	DGSC
3635 P[9]	Crystal and Glass Industries Machinery.	DGSC
3650 P[9]	Chemical & Pharmaceutical Products Manufacturing Machinery.	DGSC
3655	Gas Generating and Dispensing Systems, Fixed or Mobile.	DGSC
3660 P[9]	Industrial Size Reduction Machinery.	DGSC
3680 P[9]	Foundry Machinery, Related Equipment and Supplies.	DGSC
3685 P[9]	Specialized Metal Container Manufacturing Machinery and Related Equipment.	DGSC
3693 P[9]	Industrial Assembly Machines	DGSC
3694 P[9]	Clean Work Stations, Controlled Environment & Related Equipment.	DGSC
3695	Miscellaneous Special Industry Machinery.	DGSC
3710	Soil Preparation Equipment	DCSC
3720	Harvesting Equipment	DCSC
3740	Pest, Disease, and Frost Control Equipment.	DCSC
3770	Saddlery, Harness, Whips and Related Animal Furnishings.	DCSC
3805	Earth Moving and Excavating Equipment.	DCSC
3810	Cranes and Crane-Shovels	DCSC
3815	Crane and Crane-Shovel Attachments.	DCSC
3820	Mining, Rock Drilling, Earth Boring, and Related Equipment.	DCSC
3825	Road Clearing and Cleaning Equipment.	DCSC
3830	Truck and Tractor Attachments.	DCSC
3835	Petroleum Production and Distribution Equipment.	DCSC
3895	Miscellaneous Construction Equipment.	DCSC
3910	Conveyors	DCSC
3920	Materials Handling Equipment, Nonself-Propelled.	DGSC
3930	Warehouse Trucks and Tractors, Self-Propelled.	DCSC
3940	Blocks, Tackle, Rigging, and Slings.	DISC
3950	Winches, Hoists, Cranes, and Derricks.	DCSC
3990	Miscellaneous Materials Handling Equipment.	DGSC
4010	Chain and Wire Rope	DISC
4020	Fiber Rope, Cordage and Twine.	DISC
4030	Fittings for Rope, Cable, and Chain.	DISC
4110	Refrigeration Equipment	DGSC
4120	Air Conditioning Equipment	DGSC
4130	Refrigeration and Air Conditioning Components.	DGSC
4140	Fans, Air Circulators, and Blower Equipment.	DGSC
4210 P[3]	Fire Fighting Equipment	DCSC
4220	Marine Lifesaving and Diving Equipment.	DCSC
4310	Compressors and Vacuum Pumps.	DCSC
4320	Power and Hand Pumps	DCSC
4330	Centrifugals, Separators, and Pressure and Vacuum Filters.	DCSC
4440	Driers, Dehydrators, and Anhydrators.	DCSC
4450	Industrial Fan and Blower Equipment.	DCSC
4460	Air Purification Equipment	DCSC
4510	Plumbing Fixtures and Accessories.	DCSC
4520	Space Heating Equipment and Domestic Water Heaters.	DCSC
4530	Fuel Burning Equipment Units	DCSC
4540	Miscellaneous Plumbing, Heating, and Sanitation Equipment.	DCSC
4610	Water Purification Equipment	DCSC
4620	Water Distillation Equipment, Marine and Industrial.	DCSC
4630	Sewage Treatment Equipment	DCSC
4710	Pipe and Tube	DCSC
4720	Hose and Tubing, Flexible	DCSC
4730	Fittings and Specialities; Hose, Pipe, and Tube.	DCSC
4810	Valves, Powered	DCSC
4820	Valves, Nonpowered	DCSC
4930	Lubrication and Fuel Dispensing Equipment.	DCSC
5280	Sets, Kits, and Outfits of Measuring Tools.	DGSC
5305	Screws	DISC
5306	Bolts	DISC
5307	Studs	DISC
5310	Nuts and Washers	DISC
5315	Nails, Keys, and Pins	DISC
5320	Rivets	DISC
5325	Fastening Devices	DISC
5330	Packing and Gasket Materials	DISC
5335	Metal Screening	DISC
5340	Miscellaneous Hardware	DISC
5355	Knobs and Pointers	DISC
5360	Coil, Flat and Wire Springs	DISC
5365	Rings, Shims, and Spacers	DISC
5410	Prefabricated and Portable Buildings.	DCSC

Federal supply class code	Commodity	DLA center[6]
5420	Bridges, Fixed and Floating	DCSC
5430	Storage Tanks	DCSC
5440	Scaffolding Equipment and Concrete Forms.	DCSC
5445	Prefabricated Tower Structures.	DCSC
5450	Miscellaneous Prefabricated Structures.	DCSC
5510	Lumber and Related Basic Wood Materials.	DCSC
5520	Millwork	DCSC
5530	Plywood and Veneer	DCSC
5660	Fencing, Fences and Gates	DCSC
5680 P	Miscellaneous Construction Materials. This partial assignment applies only to airplane landing mat. (Also, see footnote 1 at end of list relative to purchase of DLA managed items in GSA assigned classes.).	DCSC
5905	Resistors	DESC
5910	Capacitors	DESC
5915	Filters and Networks	DESC
5920	Fuses and Lightning Arrestors	DESC
5925	Circuit Breakers	DESC
5930	Switches	DESC
5935	Connectors, Electrical	DESC
5940	Lugs, Terminals, and Terminals Strips.	DGSC
5945	Relays, Contractors, and Solenoids.	DESC
5950	Coils and Transformers	DESC
5955	Piezoelectric Crystals	DESC
5960	Electron Tubes and Associated Hardware.	DESC
5961	Semiconductor Devices and Associated Hardware.	DESC
5962	Microelectronic Circuit Devices.	DESC
5965	Headsets, Handsets, Microphones, and Speakers.	DESC
5970	Electrical Insulators and Insulating Materials.	DGSC
5975	Electrical Hardware and Supplies.	DGSC
5977	Electrical Contact Brushes and Electrodes.	DGSC
5985	Antennas, Waveguides, and Related Equipment.	DESC
5990	Synchros and Resolvers	DESC
5995	Cable, Cord, and Wire Assemblies; Communication Equipment.	DGSC
5999	Miscellaneous Electrical and Electronic Components.	DESC
6105	Motors, Electrical	DGSC
6110	Electrical Control Equipment	DGSC
6115 P[8]	Generators and Generator Sets, Electrical.	DGSC
6120	Transformers; Distribution and Power Station.	DGSC
6145	Wire and Cable, Electrical	DISC
6150	Miscellaneous Electric Power and Distribution Equipment.	DGSC
6210	Indoor and Outdoor Electric Lighting Fixtures.	DGSC
6220	Electric Vehicular Lights and Fixtures.	DGSC
6230	Electric Portable and Hand Lighting Equipment.	DGSC
6240	Electric Lamps	DGSC
6250	Ballasts, Lampholders and Starters.	DGSC
6260	Nonelectrical Lighting Fixtures	DGSC
6350	Miscellaneous Alarm and Signal Systems.	DGSC
6505[4]	Drugs, Biologicals, and Official Reagents.	DPSC
6508[4]	Medicated Cosmetics and Toiletries.	DPSC
6510[4]	Surgical Dressing Materials	DPSC
6515[4]	Medical and Surgical Instruments, Equipment and Supplies.	DPSC
6520[4]	Dental Instruments, Equipment and Supplies.	DPSC
6525[4]	X-Ray Equipment and Supplies; Medical, Dental and Veterinary.	DPSC
6530[4]	Hospital Furniture, Equipment, Utensils, and Supplies.	DPSC
6532	Hospital and Surgical Clothing and Textile Special Purpose Items.	DPSC
6540[4]	Opticians' Instruments, Equipment and Supplies.	DPSC
6545[4]	Medical Sets, Kits, and Outfits	DPSC
6630	Chemical Analysis Instruments.	DPSC
6635	Physical Properties Testing Equipment.	DGSC
6640	Laboratory Equipment and Supplies.	DPSC
6655	Geophysical and Astronomical Instruments.	DGSC
6670	Scales and Balances	DGSC
6675	Drafting, Surveying, and Mapping Instruments.	DGSC
6680	Liquid and Gas Flow, Liquid Level and Mechanical Motion Measuring Instruments.	DGSC
6750	Photographic Supplies	DGSC
6810[7]	Chemicals	DFSC & DGSC
6820	Dyes	DGSC
6830	Gases; Compressed and Liquified.	DGSC
6840	Pest Control Agents and Disinfectants.	DGSC
6850[7]	Miscellaneous Chemical Specialties.	DFSC & DGSC
7210	Household Furnishings	DPSC
7310	Food Cooking, Baking, and Serving Equipment.	DGSC
7320	Kitchen Equipment and Appliances.	DGSC
7360	Sets, Kits, and Outfits; Food Preparation and Serving.	DGSC
7610	Books and Pamphlets	DGSC
7660	Sheet and Book Music	DGSC
7690	Miscellaneous Printed Matter	DGSC
8110	Drums and Cans	DGSC
8120	Commercial and Industrial Gas Cylinders.	DGSC
8125	Bottles and Jars	DGSC
8305	Textile Fabrics. FSC 8305 does not include laminated cloth used exclusively in the repair of lighter than air envelopes.	DPSC
8310	Yarn and Thread	DPSC
8315	Notions and Apparel Findings.	

Federal supply class code	Commodity	DLA center[6]
	FSC 8315 does not include coated cloth tape used exclusively in the repair of lighter than air envelopes.	DPSC
8320	Padding and Stuffing Materials.	DPSC
8325	Fur Materials	DPSC
8330	Leather	DPSC
8335	Shoe Findings and Soling Materials.	DPSC
8340	Tents and Tarpaulins	DPSC
8345	Flags and Pennants	DPSC
8405	Outerwear, Men's	DPSC
8410	Outerwear, Women's	DPSC
8415	Clothing, Special Purpose.	
	FSC 8415 includes all submarine clothing.	DPSC
8420	Underwear and Nightwear, Men's.	DPSC
8425	Underwear and Nightwear, Women's.	DPSC
8430	Footwear, Men's	DPSC
8435	Footwear, Women's	DPSC
8440	Hosiery, Handwear, and Clothing Accessories, Men's.	DPSC
8445	Hosiery, Handwear, and Clothing Accessories, Women's.	DPSC
8450	Children's and Infant's Apparel and Accessories.	DPSC
8455	Badges and Insignia	DPSC
8460	Luggage	DPSC
8465	Individual Equipment	DPSC
8470	Armor, Personal	DPSC
8475	Specialized Flight Clothing and Accessories.	DPSC
8905[5]	Meat, Poultry, and Fish	DPSC
8910[5]	Dairy Foods and Eggs	DPSC
8915[5]	Fruits and Vegetables	DPSC
8920[5]	Bakery and Cereal Products	DPSC
8925[5]	Sugar, Confectionery, and Nuts.	DPSC
8930[5]	Jams, Jellies, and Preserves	DPSC
8935[5]	Soups and Bouillons	DPSC
8940[5]	Special Dietary Foods and Food Specialty Preparations.	DPSC
8945[5]	Food Oils and Fats	DPSC
8950[5]	Condiments and Related Products.	DPSC
8955[5]	Coffee, Tea, and Cocoa	DPSC
8960[5]	Beverages, Nonalcoholic	DPSC
8970[5]	Composite Food Packages	DPSC
8975[5]	Tobacco Products	DPSC
9110	Fuels, Solid	DFSC
9130	Liquid Propellants and Fuels, Petroleum Base.	DFSC
9140	Fuel Oils	DFSC
9150	Oils and Greases; Cutting, Lubricating, and Hydraulic.	DFSC
9160	Miscellaneous Waxes, Oils, and Fats.	DFSC
9320	Rubber Fabricated Materials	DGSC
9330	Plastic Fabricated Materials	DGSC
9340	Glass Fabricated Materials	DGSC
9350	Refractories and Fire Surfacing Materials.	DGSC
9390	Miscellaneous Fabricated Nonmetallic Materials.	DGSC
9420 P	Fibers; Vegetable, Animal, and Synthetic.	DPSC
	This partial FSC assignment applies only to raw cotton and raw wool.	
9430 P	Miscellaneous Crude Animal Products, Inedible.	DPSC
	This partial assignment applies only to crude hides.	
9505	Wire, Nonelectrical, Iron and Steel.	DISC
9510	Bars and Rods, Iron and Steel	DISC
9515	Plate, Sheet, and Strip, Iron and Steel.	DISC
9520	Structural Shapes, Iron and Steel.	DISC
9525	Wire, Nonelectrical, Nonferrous Base Metal.	DISC
9530	Bars and Rods, Nonferrous Base Metal.	DISC
9535	Plate, Sheet, Strip, and Foil, Nonferrous Base Metal.	DISC
9540	Structural Shapes, Nonferrous Base Metal.	DISC
9545	Plate, Sheet, Strip, Foil and Wire, Precious Metal.	DISC
9620 P	Minerals, Natural and Synthetic.	DFSC
	This partial assignment applies only to crude petroleum and crude shale oil.	
9925	Ecclesiastical Equipment, Furnishings and Supplies.	DGSC
9930	Memorials, Cemeterial and Mortuary Equipment and Supplies.	DGSC
9999	Miscellaneous Items	DGSC

Footnotes:

[1] These assignments do not apply to items decentralized by the DLA Center Commander, i.e., designated for purchase by each military department, and to those items in DLA assigned federal supply classes, which may be assigned to GSA for supply management. In addition, see subpart 208.70 which describes conditions under which a military service may purchase (contract for) military service supply managed items in DLA assigned federal supply classes. See notes 2 and 3 for further exceptions pertaining to certain DLA assignments.

[2] DLA assignments in FSC 2510, 2520, 2530, 2540, 2590, 2805, 2910, 2920, 2930, 2940, and 2990 do not apply to repair parts peculiar to combat and tactical vehicles, which are assigned for coordinated acquisition to the Department of the Army. In addition, the assignment in FSC 2805 does not apply to military standard engines 1.5 HP through 20 HP and parts peculiar therefor, which are assigned for coordinated acquisition to the Department of the Army.

[3] This partial FSC assignment in FSC 4210 does not apply to Fire Fighting Equipment developed by or under the sponsorship of a military department. The contracting responsibility for such equipment is assigned to the department which developed or sponsored its development.

[4] DLA has contracting responsibility for all the items in the classes of FS Group 65. In addition, DLA has contracting responsibility for all equipment and supplies related to the medical, dental, veterinary professions in Non-group 65 classes where the military medical services have the sole or prime interest in such items. The specific item coverage of these Non-group 65 items is published in the DoD section of the Federal Supply Catalog for medical material C3–1 through C3–12, inclusive.

[5] This assignment includes health and comfort items listed in AR 700–23. It also includes resale items for commissary stores (including brand name items).

[6] DLA centers are identified as follows—DCSC—Defense Construction Supply Center; DESC—Defense Electronics Supply Center; DFSC—Defense Fuel Supply Center; DGSC—Defense General Supply Center; DISC—Defense Industrial Supply Center; DPSC—Defense Personnel Support Center.

[7] DFSC is responsible for contracting for only petroleum base items in FSC 6810 and 6850.

[8] This partial FSC assignment in FSC 6115 does not apply to Mobile Electric Power Generating Sources (MEPGS). The contracting direction responsibility for MEPGS is assigned to the DoD Project Manager, Mobile Electric Power, by DoDD 4120.11. DoD components desiring to use other than the DoD Standard Family of Generator Sets, contained in MIL–STD 633, shall process a Request for Deviation in accordance with Joint Operating Procedures, AR 700–101, AFR 400–50, NAVMATINST 4120.100A, MCO 11310.8c and DLAR 4120.7, Subject: Management and Standardization of Mobile Electric Power Generating Sources, prior to initiating an acquisition.

[9] This partial assignment applies only to secondary items not otherwise assigned, as listed in the applicable Federal Supply Catalog Management Data lists of each respective service.

PART 5—DEFENSE SPECIAL WEAPONS AGENCY ASSIGNMENTS

Federal supply class code	Commodity
1105	Nuclear Bombs.
1110	Nuclear Projectiles.
1115	Nuclear Warheads and Warhead Sections.
1125	Nuclear Demolition Charges.
1127	Nuclear Rockets.
1130	Conversion Kits, Nuclear Ordnance.
1135	Fuzing and Firing Devices, Nuclear Ordnance.
1140	Nuclear Components.
1145	High Explosive Charges, Propellants, and Detonators; Nuclear Ordnance.
1190	Specialized Test and Handling Equipment, Nuclear Ordnance.
1195	Miscellaneous Nuclear Ordnance.
	In addition to the above, assignments to DSWA include all items for which DSWA has integrated management responsibility in accordance with DoD Directive 5105.31.

PART 6—GENERAL SERVICES ADMINISTRATION ASSIGNMENTS

Federal supply class code	Commodity
2310 P	Passenger Motor Vehicles.
2320 P	Trucks and Truck Tractors.
	These two partial assignments apply to all commercial, non-tactical, passenger carrying vehicles and trucks except the following types which are assigned for DoD Coordinated Acquisition to the Department of the Army—
	Bus, convertible to ambulance.
	Truck, 4×4, convertible to ambulance.
	Truck, 4×4, dump, 9,000 pounds GVW, with cut-down cab.
	(See Army Coordinated Acquisition assignments in FSC 2310 and 2320).
3540	Wrapping and Packaging Machinery.
3550	Vending and Coin Operated Machines.
3590	Miscellaneous Service and Trade Equipment.
3750	Gardening Implements and Tools.
5110	Hand Tools, Edged, Nonpowered.
5120	Hand Tools, Nonedged, Nonpowered.
5130	Hand Tools, Power Driven.
5133	Drill Bits, Counterbores, and Countersinks; Hand and Machine.
5136	Taps, Dies, and Collects; Hand and Machine.
5140	Tool and Hardware Boxes.
5180	Sets, Kits, and Outfits of Hand Tools.
5210	Measuring Tools, Craftmen's.
5345	Disks and Stones, Abrasive.
5350	Abrasive Materials.
5610	Mineral Construction Materials, Bulk.
5620	Building Glass, Tile, Brick, and Block.
5630	Pipe and Conduit, Nonmetallic.
5640	Wallboard, Building Paper, and Thermal Insulation Materials.
5650	Roofing and Siding Materials.
5670	Architectural and Related Metal Products.
5680 P[1]	Miscellaneous Construction Materials.
7105	Household Furniture.
7110	Office Furniture.
7125	Cabinets, Lockers, Bins, and Shelving.
7195	Miscellaneous Furniture and Fixtures.
7220	Floor Coverings.
7230	Draperies, Awnings, and Shades.
7240	Household and Commercial Utility Containers.

NOTE: (''P'' after FSC number indicates partial FSC assignment.)

7290	Miscellaneous Household and Commercial Furnishings and Appliances.
7330	Kitchen Hand Tools and Utensils.
7340	Cutlery and Flatware.
7350	Tableware.
7410	Punched Card System Machines.
7420	Accounting and Calculating Machines.
7430	Typewriters and Office-type Composing Machines.
	This assignment does not apply to machines controlled by the Congressional Joint Committee on Printing.
7450	Office-type Sound Recording and Reproducing Machines.
7460	Visible Record Equipment.
7490	Miscellaneous Office Machines.
	This assignment does not apply to equipment controlled by the Congressional Joint Committee on Printing.
7510	Office Supplies.
	This assignment does not apply to office supplies, including special inks, when DoD requirements of such items are acquired through Government Printing Office channels.
7520	Office Devices and Accessories.
	This assignment does not apply to office devices and accessories when DoD requirements of such items are acquired through Government Printing Office channels.
7530	Stationery and Record Forms.
	This assignment does not apply to stationery and record forms when DoD requirements of such items are acquired through Government Printing Office channels including those items covered by term contracts issued by GPO for tabulating cards and marginally punched continuous forms.
7710	Musical Instruments.
7720	Musical Instrument Parts and Accessories.
7730	Phonographs, Radios, and Television Sets; Home Type.
7740	Phonograph Records.
7810	Athletic and Sporting Equipment.
7820	Games, Toys, and Wheeled Goods.
7830	Recreational and Gymnastic Equipment.
7910	Floor Polishers and Vacuum Cleaning Equipment.
7920	Brooms, Brushes, Mops, and Sponges.
7930	Cleaning and Polishing Compounds and Preparations.

Federal supply class code	Commodity
8010	Paints, Dopes, Varnishes, and Related Products.
8020	Paint and Artists Brushes.
8030	Preservative and Sealing Compounds.
8040	Adhesives.
8105	Bags and Sacks.
8115	Boxes, Cartons and Crates.
8135	Packaging and Packing Bulk Materials.
8510	Perfumes, Toilet Preparations and Powders.
8520	Toilet Soap, Shaving Preparations and Dentifrices.
8530	Personal Toiletry Articles.
8540	Toiletry Paper Products.
8710	Forage and Feed.
8720	Fertilizers.
8730	Seeds and Nursery Stock.
9310	Paper and Paperboard.
9905	Signs, Advertising Displays, and Identification Plates.
9910	Jewelry.
9915	Collector's Items.
9920	Smokers' Articles and Matches.

FOOTNOTES: These GSA assignments do not apply to items as described under FSC 7430, 7490, 7510, 7520, and 7530, and those items in the GSA assigned federal supply classes which have been retained for DLA supply management as listed in the applicable Federal Supply Catalog Management Data lists. In addition, see subpart 208.70 which describes conditions under which a military service may contract for military service managed items in GSA assigned federal supply classes.

[1] This partial FSC assignment does not include landing mats which are assigned to the Defense Logistics Agency.

[56 FR 36577, July 31, 1991, as amended at 57 FR 42634, Sept. 15, 1992; 58 FR 28475, May 13, 1993; 58 FR 37868, July 14, 1993; 59 FR 27678, May 27, 1994; 61 FR 50456, Sept. 26, 1996]

APPENDIX C [RESERVED]

APPENDIX D—COMPONENT BREAKOUT

Sec.
D–100 Scope.
D–101 Definition.
D–102 Policy.
D–103 Responsibility.
D–104 Procedures.
D–105 Records.

AUTHORITY; 41 U.S.C. 421 and FAR Subpart 1.3.

D–100 SCOPE.

(a) This appendix provides policy and procedures for breaking out components of end items for future acquisitions so that the Government can purchase the components directly from the manufacturer or supplier and furnish them to the end item manufacturer as Government-furnished material.

(b) This appendix does not apply to—

(1) The initial decisions on Government-furnished equipment/contractor-furnished equipment that are made at the inception of an acquisition program; or

(2) Breakout of parts for replenishment (see Appendix E).

D–101 DEFINITION.

Component, as used in this appendix, includes subsystems, assemblies, subassemblies, and other major elements of an end item; it does not include elements of relatively small annual acquisition value.

D–102 POLICY.

DoD policy is to breakout components of weapons systems or other major end items under certain circumstances.

(a) When it is anticipated that a prime contract will be awarded without adequate price competition, and the prime contractor is expected to acquire any component without adequate price competition, breakout that component if—

(1) Substantial net cost savings probably will be achieved; and

(2) Breakout action will not jeopardize the quality, reliability, performance, or timely delivery of the end item.

(b) Even when either or both the prime contract and the component will be acquired with adequate price competition, consider breakout of the component if substantial net cost savings will result from—

(1) Greater quantity acquisitions; or

(2) Such factors as improved logistics support (through reduction in varieties of spare parts) and economies in operations and training (through standardization of design).

(c) Breakout normally is not justified for a component that is not expected to exceed $1 million for the current year's requirement.

D–103 RESPONSIBILITY.

(a) Agencies are responsible for ensuring that—

(1) Breakout reviews are performed on components meeting the criteria in D–102(a) and (b);

(2) Components susceptible to breakout are earmarked for consideration in future acquisitions;

(3) Components earmarked for breakout are considered during requirements determination and appropriate decisions are made; and

(4) Components are broken out when required.

(b) The program manager or other official responsible for the material program concerned is responsible for breakout selection, review, and decision.

(c) The contracting officer or buyer and other specialists (e.g., small business specialist, engineering, production, logistics, and maintenance) support the program manager in implementing the breakout program.

D–104 PROCEDURES.

(a) A breakout review and decision includes—

(1) An assessment of the potential risks to the end item from possibilities such as delayed delivery and reduced reliability of the component;

(2) A calculation of estimated net cost savings (i.e., estimated acquisition savings less any offsetting costs); and

(3) An analysis of the technical, operational, logistics, and administrative factors involved.

(b) The decision must be supported by adequate explanatory information, including an assessment by the end item contractor when feasible.

(c) The following questions should be used in the decision process—

(1) Is the end item contractor likely to do further design or engineering effort on the component?

(2) Is a suitable data package available with rights to use it for Government acquisition? (Note that breakout may be warranted even though competitive acquisition is not possible.)

(3) Can any quality control and reliability problems of the component be resolved without requiring effort by the end item contractor?

(4) Will the component require further technical support (e.g., development of specifications, testing requirements, or quality assurance requirements)? If so, does the Government have the resources (manpower, technical competence, facilities, etc.) to provide such support? Or, can the support be obtained from the end item contractor (even though the component is broken out) or other source?

(5) Will breakout impair logistics support (e.g., by jeopardizing standardization of components)?

(6) Will breakout unduly fragment administration, management, or performance of the end item contract (e.g., by complicating production scheduling or preventing identification of responsibility for end item failure caused by a defective component)?

(7) Can breakout be accomplished without jeopardizing delivery requirements of the end item?

(8) If a decision is made to breakout a component, can advance acquisition funds be made available to provide the new source any necessary additional lead time?

(9) Is there a source other than the present manufacturer capable of supplying the component?

(10) Has the component been (or is it going to be) acquired directly by the Government as a support item in the supply system or as Government-furnished equipment in other end items?

(11) Will the financial risks and other responsibilities assumed by the Government after breakout be acceptable?

(12) Will breakout result in substantial net cost savings? Develop estimates of probable savings in cost considering all offsetting costs such as increases in the cost of requirements determination and control, contracting, contract administration, data package purchase, material inspection, qualification or preproduction testing, ground support and test equipment, transportation, security, storage, distribution, and technical support.

(d) If answers to the questions reveal conditions unfavorable to breakout, the program manager should explore whether the unfavorable conditions can be eliminated. For example, where adequate technical support is not available from Government resources, consider contracting for the necessary services from the end item contractor or other qualified source.

D–105 RECORDS.

(a) The contracting activity shall maintain records on components reviewed for breakout. Records should evidence whether the components—

(1) Have no potential for breakout;

(2) Have been earmarked as potential breakout candidates;

(3) Have been, or will be, broken out.

(b) The program manager or other designated official must sign the records.

(c) Records must reflect the facts and conditions of the case, including any assessment by the contractor, and the basis for the decision. The records must contain the assessments, calculations, and analyses discussed in D–104, including the trade–off analysis between savings and increased risk to the Government because of responsibility for Government–furnished equipment.

[56 FR 36594, July 31, 1991, as amended at 57 FR 42634, Sept. 15, 1992; 58 FR 37868, July 14, 1993]

APPENDIX E—DOD SPARE PARTS BREAKOUT PROGRAM

Sec.

Part 1—General

E–100 Scope.
E–101 Applicability.
E–102 General.
E–103 Definitions.
E–103.1 Acquisition Method Code (AMC).
E–103.2 Acquisition Method Code Conference.
E–103.3 Acquisition Method Suffix Code (AMSC).
E–103.4 Actual Manufacturer.
E–103.5 Altered Item Drawing.
E–103.6 Annual Buy Quantity.
E–103.7 Annual Buy Value (ABV).
E–103.8 Bailment.
E–103.9 Breakout.
E–103.10 Competition.
E–103.11 Contractor Technical Information Code (CTIC).

E–103.12 Design Control Activity.
E–103.13 Direct Purchase.
E–103.14 Engineering Drawings.
E–103.15 Extended Dollar Value.
E–103.16 Full and Open Competition.
E–103.17 Full Screening.
E–103.18 Immediate (Live) Buy.
E–103.19 Life Cycle Buy Value.
E–103.20 Limited Competition.
E–103.21 Limited Screening.
E–103.22 Manufacture.
E–103.23 Prime Contractor.
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E–103.26 Replenishment Part.
E–103.27 Reverse Engineering.
E–103.28 Selected Item Drawing.
E–103.29 Source.
E–103.30 Source Approval.
E–103.31 Source Control Drawing.
E–103.32 Technical Data.
E–104 General Policies.
E–105 Responsibilities.

Part 2—Breakout Coding

E–200 Scope.
E–201 Coding.
E–201.1 Acquisition Method Codes.
E–201.2 Acquisition Method Suffix Codes.
E–201.3 Contractor Technical Information Codes.
E–202 Assignment of Codes.
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E–204 Communication of Codes.
E–204.1 Communication Media.
E–204.2 Responsibilities.

Part 3—Identification, Selection, and Screening of Parts

E–300 General.
E–301 Identification and Selection Procedures.
E–301.1 Parts Entering the Inventory.
E–301.2 Annual Buy Forecasts.
E–301.3 Immediate Buy Requirements.
E–301.4 Suspect AMC/AMSC.
E–302 Screening.
E–303 Full Screening Procedures.
E–303.1 Data Collection Phase (Step 1).
E–303.2 Data Evaluation Phase (Steps 2–14).
E–303.3 Data Completion Phase (Steps 15–21).
E–303.4 Technical Evaluation Phase (Steps 22–37).
E–303.5 Economic Evaluation Phase (Steps 38–56).
E–303.6 Supply Feedback Phase (Steps 57–65).
E–304 Limited Screening Procedures.

Part 4—Contractor's Assistance

E–400 General.
E–401 Contractor's Technical Evaluation Procedures.

Part 5—Reporting System

E–500 General.
E–501 Reports.
E–502 Reporting Procedures.
E–503 Reporting Instructions.

Exhibits

Exhibit I Valid AMC/AMSC Combinations
Exhibit II Full Screening Decision Process Summary Flow Charts
Exhibit III Limited Screening Decision Process Summary Flow Charts
Exhibit IV Spare Parts Breakout Screening Report
Exhibit V Spare Parts Acquisition Report

AUTHORITY; 41 U.S.C. 421 and 48 CFR chapter 1.

Part 1—General

E–100 Scope.

This appendix established the DoD Spare Parts Breakout Program and provides uniform policies and procedures for management and conduct of the program within and between the departments and agencies.

E–101 Applicability.

(a) This appendix applies to—

(1) Any centrally managed replenishment or provisioned part (hereinafter referred to as ''part'') for military systems and equipment; and

(2) All DoD personnel involved with design control, acquisition, and management of such parts including, but not limited to, project/program/system managers, technical personnel, contracting officers, legal counsel, inventory managers, inspectors, and small business specialists and technical advisors.

(b) This appendix does not apply to—

(1) Component breakout (see Appendix D);

(2) Foreign military sale peculiar items;

(3) Insurance items (e.g., one-time buy);

(4) Obsolete items;

(5) Phase out items (e.g., life of type buy);

(6) Items with annual buy values below the thresholds developed by DoD components or field activities;

(7) Parts being acquired under other specifically defined initial support programs; or

(8) Parts acquired through local purchase.

E–102 General.

(a) Significant resources are dedicated to the acquisition and management of parts for military systems and equipment. The ability to competitively buy spares must be considered early in a weapon system acquisition. Initially, repairable or consumable parts are identified and acquired through a provisioning process; repairable or consumable parts acquired thereafter are for replenishment.

(b) The objective of the DoD Spare Parts Breakout Program is to reduce costs through

the use of competitive procurement methods, or the purchase of parts directly from the actual manufacturer rather than the prime contractor, while maintaining the integrity of the systems and equipment in which the parts are to be used. The program is based on the application of sound management and engineering judgement in—

(1) Determining the feasibility of acquiring parts by competitive procedures or direct purchase from actual manufacturers; and

(2) Overcoming or removing constraints to breakout identified through the screening process (technical review) described in E–302.

(c) This Appendix sets forth procedures to screen and code parts in order to provide contracting officers summary information regarding technical data and sources of supply to meet the Government's minimum requirements. This information assists the contracting officer in selecting the method of contracting, identifying sources of supply, and making other decisions in the preaward and award phases, with consideration for established parameters of system and equipment integrity, readiness, and the opportunities to competitively acquire parts (see FAR/DFARS Part 6). The identification of sources for parts, for example, requires knowledge of manufacturing sources, additional operations performed after manufacture of parts possessing safety or other critical characteristics, and the availability of technical data.

(d) The result of the screening process (technical review is indicated by an acquisition method code (AMC) and an acquisition method suffix code (AMSC). This program provides procedures for both the initial assignment of an AMC and an AMSC to a part, and for the recurring review of these codes (see E–202 and E–203(b)(1)).

E–103 Definitions.

E–103.1 Acquisition method code (AMC).

A single digit numeric code, assigned by a DoD activity, to describe to the contracting officer and other Government personnel the results of a technical review of a part and its suitability for breakout.

E–103.2 Acquisition method code conference.

A conference which is generally held at the contractor's facility for the purpose of reviewing contractor technical information codes (CTICs) and corresponding substantiating data for breakout.

E–103.3emsp;Acquisition method suffix code (AMSC).

A single digit alpha code, assigned by a DoD activity, which provides the contracting officer and other Government personnel with engineering, manufacturing, and technical information.

E–103.4 Actual manufacturer.

An individual, activity, or organization that performs the physical fabrication processes that produce the deliverable part or other items of supply for the Government. The actual manufacturer must produce the part in-house. The actual manufacturer may or may not be the design control activity.

E–103.5 Altered item drawing.

See current version of DoD STD–100, paragraphs 201.4.4 and 703.

E–103.6 Annual buy quantity.

The forecast quantity of a part required for the next 12 months.

E–103.7 Annual buy value (ABV).

The annual buy quantity of a part multiplied by its unit price.

E–103.8 Bailment.

The process whereby a part is loaned to a recipient with the agreement that the part will be returned at an appointed time. The government retains legal title to such material even though the borrowing organization has possession during the stated period.

E–103.9 Breakout.

The improvement of the acquisition status of a part resulting from a technical review and a deliberate management decision. Examples are—

(a) The competitive acquisition of a part previously purchased noncompetitively; and

(b) The direct purchase of a part previously purchased from a prime contractor who is not the actual manufacturer of the part.

E–103.10 Competition.

A contract action where two or more responsible sources, acting independently, can be solicited to satisfy the Government's requirement.

E–103.11 Contractor technical information code (CTIC).

A two digit alpha code assigned to a part by a prime contractor to furnish specific information regarding the engineering, manufacturing, and technical aspects of that part.

E–103.12 Design control activity.

A contractor or Government activity having responsibility for the design of a given part, and for the preparation and currency of engineering drawings and other technical data for that part. The design control activity may or may not be the actual manufacturer. The design control activity is synonymous with design activity as used by DoD STD–100.

E–103.13 Direct purchase.

The acquisition of a part from the actual manufacturer, including a prime contractor who is an actual manufacturer of the part.

E–103.14 Engineering drawings.

See current versions of DoD STD–100 and DoDD 1000.

E–103.15 Extended dollar value.

The contract unit price of a part multiplied by the quantity purchased.

E–103.16 Full and open competition.

A contract action where all responsible sources are permitted to compete.

E–103.17 Full screening.

A detailed parts breakout process, including data collection, data evaluation, data completion, technical evaluation, economic evaluation, and supply feedback, used to determine if parts can be purchased directly from the actual manufacturer(s) or can be competed.

E–103.18 Immediate (live) buy.

A buy which must be executed as soon as possible to prevent unacceptable equipment readiness reduction, unacceptable disruption in operational capability, and increased safety risks, or to avoid other costs.

E–103.19 Life cycle buy value.

The total dollar value of all acquisitions that are estimated to occur over a part's remaining life cycle.

E–103.20 Limited competition.

A competitive contract action where the provisions of full and open competition do not exist.

E–103.21 Limited screening.

A parts breakout process covering only selected points of data and technical evaluations, and should only be used to support immediate buy requirements (see E–301.3).

E–103.22 Manufacture.

The physical fabrication process that produces a part, or other item of supply. The physical fabrication processes include, but are not limited to machining, welding, soldering, brazing, heat treating, braking, riveting, pressing, chemical treatment, etc.

E–103.23 Prime contractor.

A contractor having responsibility for design control and/or delivery of a system/equipment such as aircraft, engines, ships, tanks, vehicles, guns and missiles, ground communications and electronics systems, and test equipment.

E–103.24 Provisioning.

The process of determining and acquiring the range and quantity (depth) of spare and repair parts, and support and test equipment required to operate and maintain an end item of materiel for an initial period of service.

E–103.25 Qualification.

Any action (contractual or precontractual) that results in approval for a firm to supply items to the Government without further testing beyond quality assurance demonstrations incident to acceptance of an item. When prequalification is required, the Government must have a justification on file—

(a) Stating the need for qualification and why it must be done prior to award;

(b) Estimating likely cost of qualification; and

(c) Specifying all qualification requirements.

E–103.26 Replenishment part.

A part, repairable or consumable, purchased after provisioning of that part, for: replacement; replenishment of stock; or use in the maintenance, overhaul, and repair of equipment such as aircraft, engines, ships, tanks, vehicles, guns and missiles, ground communications and electronic systems, ground support, and test equipment. As used in this appendix, except when distinction is necessary, the term ''part'' includes subassemblies, components, and subsystems as defined by the current version of MIL–STD–280.

E–103.27 Reverse engineering.

A process by which parts are examined and analyzed to determine how they were manufactured, for the purpose of developing a complete technical data package. The normal, expected result of reverse engineering is the creation of a technical data package suitable for manufacture of an item by new sources.

E–103.28 Selected item drawing.

See current version of DoD–STD–100, paragraph 201.4.5.

E–103.29 Source.

Any commercial or noncommercial organization which can supply a specified part. For coding purposes, sources include actual manufacturers, prime contractors, vendors, dealers, surplus dealers, distributors, and other firms.

E–103.30 Source approval.

The Government review that must be completed before contract award.

E–103.31 Source control drawing.

See the current version of DoD–STD–100, paragraph 201.4.3.

E–103.32 Technical data.

Specifications, plans, drawings, standards, purchase descriptions, and such other data to describe the Government's requirements for acquisition.

E–104 General policies.

(a) The identification, selection, and screening of parts for breakout shall be made as early as possible to determine the technical and economic considerations of the opportunities for breakout to competition or direct purchase. Full and open competition is the preferred result of breakout screening.

(b) A part shall be made a candidate for breakout screening based on its cost effectiveness for breakout. Resources should be assigned and priority given to those parts with the greatest expected return given their annual buy value, life cycle buy value, and likelihood of successful breakout, given technical characteristics such as design and performance stability. Consideration of all such factors is necessary to ensure the maximum return on investment in a given breakout program. Occasionally, an item will not meet strict economic considerations for breakout, but action may be required due to other considerations to avoid overpricing situations. Accordingly, there is no minimum DoD threshold for breakout screening actions. DoD components and field activities will develop annual buy thresholds for breakout screening which are consistent with economic considerations and resources. Every effort should be made to complete the full screening of parts that are expected to be subsequently replenished as they enter the inventory.

(c) Breakout improvement efforts shall continue through the life cycle of a part to improve its breakout status (see E–203) or until such time as the part is coded 1G, 2G, 1K, 2K, 1M, 2M, 1N, 2N, 1T, 2T, 1Z, or 2Z.

(d) No firm shall be denied the opportunity to demonstrate its ability to furnish a part which meets the Government's needs, without regard to a part's annual buy value, where a restrictive AMC/AMSC is assigned (see FAR 9.202). A firm must clearly demonstrate, normally at its own expense, that it can satisfy the Government's requirements. The Government shall make a vigorous effort to expedite its evaluation of such demonstration and to furnish a decision to the demonstrating firm within a reasonable period of time. If a resolution cannot be made within 60 days, the offeror must be advised of the status of the request and be provided with a good faith estimate of the date the evaluation will be completed. Every reasonable effort shall be made to complete the review before a subsequent acquisition is made. Also, restrictive codes and low annual buy value do not preclude consideration of a surplus dealer or other nonmanufacturing source when the part offered was manufactured by an approved source (see FAR 10.010). A potential surplus dealer or other nonmanufacturing source must provide the Government with all the necessary evidence which proves the proposed part meets the Government's requirements.

(e) The experience and knowledge accrued by contractors in the development, design, manufacture and test of equipment may enhance the breakout decision making process. DoD activities may obtain technical information from contractors when it is considered requisite to an informed coding decision. The procedure for contracting for this information is provided in Part 4 of this appendix. Contractor's technical information will be designated by CTICs. Only DoD activities shall assign AMCs and AMSCs.

(f) DoD activities with breakout screening responsibilities shall develop, document, and advertise programs which promote the development of qualified sources for parts that are currently being purchased sole source. These programs should provide fair and reasonable technical assistance (engineering or other technical data, parts on bailment, etc.) to contractors who prove they have potential for becoming a qualified second source for an item. These programs should also provide specially tailored incentives to successful firms so as to stimulate their investment in becoming qualified, e.g., Government furnished equipment (GFE) or Government furnished material (GFM) for reverse engineering and technical data package review and assistance.

(g) Departments and agencies shall identify the engineering support activity, design control activity, actual manufacturer, and prime contractor for each part such that the information is readily available to breakout and acquisition personnel.

E–105 Responsibilities.

(a) The Assistant Secretary of Defense (Production and Logistics) has authority for direction and management of the DoD Spare Parts Breakout Program, including the establishment and maintenance of implementing regulations.

(b) Departments and agencies shall perform audits to ensure that their respective activities comply with the provisions of this program.

(c) Commanders of DoD activities with breakout screening responsibility shall—

(1) Implement a breakout program consistent with the requirements of this appendix.

(2) Assist in the identification and acquisition of necessary data rights and technical data, and the review of restrictive legends on technical data, during system/equipment development and production to allow, when feasible, breakout of parts.

(3) Designate a program manager to serve as the central focal point, communicate breakout policy, ensure cost effectiveness of

screening actions and breakout program, provide assistance in implementing breakout screening, monitor ongoing breakout efforts and achievements, and provide surveillance over implementation of this appendix. The program manager shall report only to the Commander, or deputy, of the activity with breakout screening responsibility.

(4) Ensure that actions to remove impediments to breakout are continued so long as it is cost effective, or until no further breakout improvements can be made.

(5) Invite the activity's small business specialist and the resident small business administration's procurement center representative (PCR), if any, to participate in all acquisition method coding conferences at Government and contractor locations.

(6) Ensure timely engineering and technical support to other breakout activities regardless of location.

(i) In the case of parts where contracting or inventory management responsibility has been transferred, support shall include—

(A) Assignment of an AMC/AMSC prior to the transfer;

(B) Assignment of an AMC/AMSC when requested by the receiving activity to parts transferred without such codes. The requesting activity may recommend an AMC/AMSC; and

(C) Full support of the receiving activities' breakout effort by providing timely engineering support in revising existing AMC/AMSCs.

(ii) In all cases, support shall include, but not be limited to, furnishing all necessary technical data and other information (such as code suspense date and procurement history) to permit acquisition in accordance with the assigned AMC/AMSC (see E–105(d)(6)).

(7) Ensure that appropriate surveillance is given to first time breakout parts.

(d) Breakout program managers shall be responsible for—

(1) Initiating the breakout process during the early phases of development and continue the process during the life of the part;

(2) Considering the need for contractor technical information codes (CTICs) and, when needed, initiating a contract data requirement;

(3) Identifying, selecting, and screening in accordance with Part 3 of this appendix;

(4) Assigning an AMC/AMSC, using all available data, including CTICs;

(5) Responding promptly to a request for evaluation of additional sources or a review of assigned codes. An evaluation not completed prior to an immediate buy shall be promptly completed for future buys; and

(6) Documenting all assignments and changes, to include rationale for assigning the chosen code, in a permanent file for each part. As a minimum, the file should identify the engineering support activity, cognizant design control activity, actual manufacturer, prime contractor, known sources of supply, and any other information needed to support AMC/AMSC assignments.

(e) Contracting officers responsible for the acquisition of replenishment parts shall—

(1) Consider the AMC/AMSC when developing the method of contracting, the list of sources to be solicited, the type of contract, etc.; and

(2) Provide information which is inconsistent with the assigned AMC/AMSC (e.g., availability of technical data or possible sources) to the activity responsible for code assignment with a request for timely evaluation of the additional information. An urgent immediate buy need not be delayed if an evaluation of the additional information cannot be completed in time to meet the required delivery date.

Part 2—Breakout Coding

E–200 Scope.

This part provides parts breakout codes and prescribes responsibilities for their assignment and management.

E–201 Coding.

Three types of codes are used in the breakout program.

E–201.1 Acquisition method codes.

The following codes shall be assigned by DoD activities to describe the results of the spare parts breakout screening:

(a) *AMC 0.* The part was not assigned AMC 1 through 5 when it entered the inventory, nor has it ever completed screening. Use of this code is sometimes necessary but discouraged. Maximum effort to determine the applicability of an alternate AMC is the objective. This code will never be used to recode a part that already has AMC 1 through 5 assigned, and shall never be assigned as a result of breakout screening. Maximum effort to determine the applicability of AMC 1 through 5 is the objective.

(b) *AMC 1.* Suitable for competitive acquisition for the second or subsequent time.

(c) *AMC 2.* Suitable for competitive acquisition for the first time.

(d) *AMC 3.* Acquire, for the second or subsequent time, directly from the actual manufacturer.

(e) *AMC 4.* Acquire, for the first time, directly from the actual manufacturer.

(f) *AMC 5.* Acquire directly from a sole source contractor which is not the actual manufacturer.

E–201.2 Acquisition method suffix codes.

The following codes shall be assigned by DoD activities to further describe the acquisition method code. Valid combinations of AMCs/AMSCs are indicated in paragraphs (a)

through (z) of this subsection and summarized in Exhibit I.

(a) *AMSC A.* The Government's right to use data in its possession is questionable. This code is only applicable to parts under immediate buy requirements and for as long thereafter as rights to data are still under review for resolution and appropriate coding. This code is assigned only at the conclusion of limited screening, and it remains assigned until the full screening process resolves the Government's rights to use data and results in assignment of a different AMSC. If one source is available, AMCs 3, 4, or 5 are valid. If at least two sources exist, or if the data is adequate for an alternate source to qualify in accordance with the design control activity's procedures, AMCs 1 or 2 are valid.

(b) *AMSC B.* This part must be acquired from a manufacturing source(s) specified on a source control or selected item drawing as defined by the current version of DoD–STD–100. Suitable technical data, Government data rights, or manufacturing knowledge are not available to permit acquisition from other sources, nor qualification testing of another part, nor use of a second source part in the intended application. Although, by DoD–STD–100 definition, altered and selected items shall have an adequate technical data package, data review discloses that required data or data rights are not in Government possession and cannot be economically obtained. If one source is available, AMCs 3, 4, or 5 are valid. If at least two sources exist, AMCs 1 or 2 are valid.

(c) *AMSC C.* This part requires engineering source approval by the design control activity in order to maintain the quality of the part. Existing unique design capability, engineering skills, and manufacturing knowledge by the qualified source(s) require acquisition of the part from the approved source(s). The approved source(s) retain data rights, manufacturing knowledge, or technical data that are not economically available to the Government, and the data or knowledge is essential to maintaining the quality of the part. An alternate source must qualify in accordance with the design control activity's procedures, as approved by the cognizant Government engineering activity. The qualification procedures must be approved by the Government engineering activity having jurisdiction over the part in the intended application. If one source is approved, AMCs 3, 4, or 5 are valid. If at least two sources are approved or if data is adequate for an alternate source to qualify in accordance with the design control activity's procedures, AMCs 1 or 2 are valid.

(d) *AMSC D.* The data needed to acquire this part competitively is not physically available, it cannot be obtained economically, nor is it possible to draft adequate specifications or any other adequate, economical description of the material for a competitive solicitation. AMSC 3, 4, or 5 are valid.

(e) *AMSC E.* (Reserved).

(f) *AMSC F.* (Reserved).

(g) *AMSC G.* The Government has rights to the technical data, the data package is complete, and there are no technical data, engineering, tooling or manufacturing restrictions. (This is the only AMSC that implies that parts are candidates for full and open competition. Other AMSCs such as K, M, N, Q, and S may imply limited competition when two or more independent sources exist yet the technical data package is inadequate for full and open competition.) AMCs 1 or 2 are valid.

(h) *AMSC H.* The Government physically does not have in its possession sufficient, accurate, or legible data to purchase this part from other than the current source(s). This code is applicable only to parts under immediate buy requirements and only for as long thereafter as the deficiency is under review for resolution and appropriate recoding. This code is only assigned at the conclusion of limited screening, and it remains assigned until the full screening process resolves physical data questions and results in assignment of a different AMSC. If one source is available, AMCs 3, 4, or 5 are valid. If at least two sources exist, AMCs 1 or 2 are valid.

(i) *AMSC I.* (Not authorized.)

(j) *AMSC J.* (Reserved.)

(k) *AMSC K.* This part must be produced from class 1 castings and similar type forgings as approved (controlled) by procedures contained in the current version of MIL–STD–2175. If one source has such castings and cannot provide them to other sources, AMCs 3, 4, or 5 are valid. If at least two sources have such castings or they can be provided to other sources AMCs 1 or 2 or valid.

(l) *AMSC L.* The annual buy value of this part falls below the screening threshold established by DoD components and field activities. However, this part has been screened for additional known sources, resulting in either confirmation that the initial source exists or that other sources may supply the part. No additional screening was performed to identify the competitive or noncompetitive conditions that would result in assignment of a different AMSC. This code shall not be used when screening parts entering the inventory. This code shall be used only to replace AMSC O for parts under the established screening threshold. If one source is available, AMCs 3, 4, or 5 are valid. If at least two sources exist, AMCs 1 or 2 are valid.

(m) *AMSC M.* Manufacture of this part requires use of master or coordinated tooling. If only one set of tooling exists and cannot be made available to another source for manufacture of this part, AMCs 3, 4, or 5 are valid. When the availability of existent or

refurbishable tooling is available to two or more sources, then AMCs 1 or 2 are valid.

(n) *AMSC N.* Manufacture of this part requires special test and/or inspection facilities to determine and maintain ultra-precision quality for its function or system integrity. Substantiation and inspection of the precision or quality cannot be accomplished without such specialized test or inspection facilities. If the test cannot be made available for the competitive manufacture of the part, the required test or inspection knowledge cannot be documented for reliable replication, or the required physical test or inspection facilities and processes cannot be economically documented in a TDP, valid AMCs are 3, 4, or 5. If the facilities or tests can be made available to two or more competitive sources, AMCs 1 or 2 are valid.

(o) *AMSC O.* The part was not assigned an AMSC when it entered the inventory, nor has it ever completed screening. Use of this code in conjunction with AMC 0 is sometimes necessary but discouraged. Maximum effort to determine the applicability of an alternate AMSC is the objective. Only AMC O is valid.

(p) *AMSC P.* The rights to use the data needed to purchase this part from additional source(s) are not owned by the Government and cannot be purchased, developed, or otherwise obtained. It is uneconomical to reverse engineer this part. This code is used in situations where the Government has the data but does not own the rights to the data. If only one source has the rights or data to manufacture this item, AMCs 3, 4, or 5 are valid. If two or more sources have the rights or data to manufacture this item, AMCs 1 or 2 are valid.

(q) *AMSC Q.* The Government does not have adequate data, lacks rights to data, or both needed to purchase this part from additional sources. The Government has been unable to economically buy the data or rights to the data, although the part has been undergoing full screening for 12 or more months. Breakout to competition has not been achieved, but current, continuing actions to obtain necessary rights to data or adequate, reprocurement technical data indicate breakout to competition is expected to be achieved. This part may be a candidate for reverse engineering or other techniques to obtain technical data. All AMSC Q items are required to be reviewed within the timeframes cited in E–203(b). If one source is available, AMCs 3, 4, or 5 are valid. If at least two sources exist, AMCs 1 or 2 are valid.

(r) *AMSC R.* The Government does not own the data or the rights to the data needed to purchase this part from additional sources. It has been determined to be uneconomical to buy the data or rights to the data. It is uneconomical to reverse engineer the part. This code is used when the Government did not initially purchase the data and/or rights. If only one source has the rights or data to manufacture this item, AMCs 3, 4, or 5 are valid. If two or more sources have the rights or data to manufacture this item, AMCs 1 or 2 are valid.

(s) *AMSC S.* Acquisition of this item is restricted to Government approved source(s) because the production of this item involves unclassified but militarily sensitive technology (see FAR 6.3). If one source is approved, AMCs 3, 4, or 5 are valid. If at least two sources are approved, AMCs 1 or 2 are valid.

(t) *AMSC T.* Acquisition of this part is controlled by qualified products list (QPL) procedures. Competition for this part is limited to sources which are listed on or are qualified for listing on the QPL at the time of award (see FAR Part 9 and DFARS Part 209). AMCs 1 or 2 are valid.

(u) *AMSC U.* The cost to the Government to breakout this part and acquire it competitively has been determined to exceed the projected savings over the life span of the part. If one source is available, AMCs 3, 4, or 5 are valid. If at least two sources exist, AMCs 1 or 2 are valid.

(v) *AMSC V.* This part has been designated a high reliability part under a formal reliability program. Probability of failure would be unacceptable from the standpoint of safety of personnel and/or equipment. The cognizant engineering activity has determined that data to define and control reliability limits cannot be obtained nor is it possible to draft adequate specifications for this purpose. If one source is available, AMCs 3, 4, or 5 are valid. If at least two sources are available, AMCs 1 or 2 are valid.

(w) *AMSC W.* (Reserved.)

(x) *AMSC X.* (Not authorized.)

(y) *AMSC Y.* The design of this part is unstable. Engineering, manufacturing, or performance characteristics indicate that the required design objectives have not been achieved. Major changes are contemplated because the part has a low process yield or has demonstrated marginal performance during tests or service use. These changes will render the present part obsolete and unusable in its present configuration. Limited acquisition from the present source is anticipated pending configuration changes. If one source is available, AMCs 3, 4, or 5 are valid. If at least two sources exist, AMCs 1 or 2 are valid.

(z) *AMSC Z.* This part is a commercial/nondevelopmental/off-the-shelf item. Commercial item descriptions, commercial vendor catalog or price lists or commercial manuals assigned a technical manual number apply. If one source is available, AMCs 3, 4, or 5 are valid. If at least two sources are available, AMCs 1 or 2 are valid.

E–201.3 Contractor technical information codes.

The following two digit alpha codes shall be used by contractors, when contractor's assistance is requested. These codes are assigned in accordance with the current version of MIL–STD–789 and shall be considered during the initial assignment of an AMC/AMSC. For spare parts breakout, requirements for contractor assistance through CTIC submission shall be accomplished as stated in Part 4 of this appendix. Each CTIC submitted by a contractor must be accompanied by supporting documentation which justifies the proposed code. These codes and supporting documentation, transmitted by DD Form 1418, Contractor Technical Information Record, and DD Form 1418–1, Technical Data Identification Checklist, are useful not only for code assignment during acquisition coding conferences, but also for personnel conducting both full and limited screening of breakout candidates. Personnel conducting full and limited screening of breakout candidates should use the supporting documentation provided with CTICs as a source of information. However, they should not allow this information to substitute for careful analysis and further investigation of the possibilities of acquiring a part through competition or by direct purchase. The definitions for CTICs are—

(a) *CTIC CB*. Source(s) are specified on source control, altered item, or selected item drawings/documents. (The contractor shall furnish a list of the sources with this code.)

(b) *CTIC CC*. Requires engineering source approval by the design control activity in order to maintain the quality of the part. An alternate source must qualify in accordance with the design control activity's procedures, as approved by the cognizant Government engineering activity.

(c) *CTIC CG*. There are no technical restrictions to competition.

(d) *CTIC CK*. Produced from class 1 castings (see the current version of MIL–STD–2175) and similar type forgings. The process of developing and proving the acceptability of high-integrity castings and forgings requires repetitive performance by a controlled source. Each casting or forging must be produced along identical lines to those which resulted in initial acceptability of the part. (The contractor shall furnish a list of known sources for obtaining castings/forgings with this code.)

(e) *CTIC CM*. Master or coordinated tooling is required to produce this part. This tooling is not owned by the Government or, where owned, cannot be made available to other sources. (The contractor shall furnish a list of the firms possessing the master or coordinated tooling with this code.)

(f) *CTIC CN*. Requires special test and/or inspection facilities to determine and maintain ultra-precision quality for function or system integrity. Substantiation and inspection of the precision or quality cannot be accomplished without such specialized test or inspection facilities. Other sources in industry do not possess, nor would it be economically feasible for them to acquire facilities. (The contractor shall furnish a list of the required facilities and their locations with this code.)

(g) *CTIC CP*. The rights to use the data needed to purchase this part from additional sources are not owned by the Government and cannot be purchased.

(h) *CTIC CV*. A high reliability part under a formal reliability program. Probability of failure would be unacceptable from the standpoint of safety of personnel and/or equipment. The cognizant engineering activity has determined that data to define and control reliability limits cannot be obtained nor is it possible to draft adequate specifications for this purpose. Continued control by the existing source is necessary to ensure acceptable reliability. (The contractor shall identify the existing source with this code.)

(i) *CTIC CY*. The design of this part is unstable. Engineering, manufacturing, or performance characteristics indicate that the required design objectives have not been achieved. Major changes are contemplated because the part has a low process yield or has demonstrated marginal performance during tests or service use. These changes will render the present part obsolete and unusable in its present configuration. Limited acquisition from the present source is anticipated pending configuration changes. (The contractor shall identify the existing source with this code.)

E–202 Assignment of codes.

The purpose of AMC/AMSC assignments is to provide the best possible technical assessment of how a part can be acquired. The technical assessment should not be based on issues such as: are the known sources actual manufacturers, or are there two actual manufacturers in existence; but rather on factors such as the availability of adequate technical data, the Government's rights to use the data, technical restrictions placed on the hardware (criticality, reliability, special testing, master tooling, source approval, etc.) and the cost to breakout vice projected savings. In cases where there is additional technical information which affects the way a part can be acquired, it should be made available to the contracting officer, with the AMC/AMSC. Concerning the assignment of AMCs and AMSCs, it is DoD policy that—

(a) The assignment of AMC/AMSCs to parts is the responsibility of the DoD component introducing the equipment or system for which the parts are needed in the inventory. Subsequent screening is the responsibility of the DoD component assigned technical responsibility.

(b) When two or more AMSCs apply, the most technically restrictive code will be assigned.

(c) Restricted combinations of AMC/AMSCs are reflected in the AMSC definitions. The Defense Logistics Service Center will reject invalid code combinations, as shown in Exhibit I, submitted for entry into the Federal catalog program (see E–204.2).

(d) One-time acquisition of a part by a method other than indicated by the code does not require a change to the AMC (e.g., when only one of a number of sources can meet a short delivery date, or when only one manufacturing source is known but acceptable surplus parts are available from other sources).

(e) After the first acquisition under AMC 2 or 4, the AMC shall be recoded 1 or 3 respectively.

(f) Both full and limited screening will result in the assignment or reassignment of an AMC/AMSC. This assignment shall be based on the best technical judgment of breakout personnel and on information gathered during the screening process.

(g) A part need not be coded as noncompetitive based on an initial market survey which only uncovers one interested source. If the Government has sufficient technical data in its possession to enable other sources to manufacture an acceptable part, and there are no technical restrictions on the part which would preclude other sources from manufacturing it, the part should be coded competitive.

E–203 Improving part status.

(a) *General.* An effective breakout program requires that all reasonable actions be taken to improve the acquisition status of parts. The potential for improvement of the acquisition status will vary with individual circumstances. On one end of the spectrum are those parts with acquisition method suffix codes of a temporary nature requiring vigorous follow-through improvement action (e.g., AMSCs A and H); on the other end are those parts with codes suggesting a relative degree of permanence (e.g., AMSCP). A code assigned to a part should never be considered fixed with respect to either technical circumstance or time; today's technical constraint may be overcome by tomorrow's technology and a contractor's rights to data, so zealously protected today, often become less important with time. The application of breakout improvement effort must always consider individual circumstances and overall benefits expected to be obtained.

(b) *Code suspense dates.* Every part whose breakout status can be improved shall be suspensed for rescreening as appropriate. In general, the following codes cannot be improved: 1G, 2G, 1K, 2K, 1M, 2M, 1N, 2N, 1T, 2T, 1Z, or 2Z. The period between suspenses is a period for which an assigned AMC/AMSC is considered active, and routine rescreening of parts with ''valid'' codes is not required. Suspense dates may vary with the circumstance surrounding each part. A code reached as a result of limited screening (E–304) shall not be assigned a suspense date exceeding 12 months; a code reached as a result of full screening (E–303) shall not be assigned a suspense date exceeding three years. In exceptional cases, where circumstances indicate that no change can be expected in a code over an extended period, a suspense date not exceeding five years may be assigned in accordance with controls established by the breakout activity. Items with a 1G or 2G code do not require a suspense date.

E–204 Communication of codes.

E–204.1 Communication media.

Use the Federal catalog program formats, set forth in DoD Manual 4100.39–M, Defense Integrated Data System (DIDS) Procedural Manual, communication media and operating instructions as augmented by this appendix to disseminate AMCs and AMSCs.

E–204.2 Responsibilities.

(a) The Defense Logistics Service Center (DLSC) shall—

(1) Receive and disseminate AMCs and AMSCs for each national stock number (NSN) to all appropriate Government activities in consonance with scheduled Federal catalog program computer cycles;

(2) Make the AMCs and AMSCs a part of the data bank of NSN item intelligence;

(3) Perpetuate the codes in all subsequent Federal catalog program transactions; e.g., entry of new NSNs and Federal supply code (FSC) changes; and

(4) Reject invalid code combinations submitted for entry into the Federal catalog program.

(b) DoD activities responsible for the assignment of AMCs and AMSCs shall—

(1) Transmit assigned codes for each NSN through normal cataloging channels to DLSC under existing Federal catalog program procedures; and

(2) Notify DLSC by normal Federal catalog program maintenance procedures when a change in coding is made.

Part 3—Identification, selection, and screening of parts

E–300 General.

This part sets forth procedures for the identification, selection, and screening of parts.

E–301 Identification and selection procedures.

E–301.1 Parts entering the inventory.

The breakout process should begin at the earliest possible stage of weapon systems acquisition. Generally, a provisioned part will

require subsequent replenishment. Provisioning or similar lists of new parts are, therefore, the appropriate bases for selecting parts for screening. This is not to imply that breakout must be done on all items as part of the provisioning process. Priorities shall be applied to those parts offering the greatest opportunity for breakout and potential savings. The major factors in making this determination are—

(a) The unit price;

(b) The projected quantity to be purchased over the part's life cycle; and

(c) The potential for screening to result in a part being successfully broken out, e.g., item stability, cost, and completeness of technical data, etc.

E–301.2 Annual buy forecasts.

Annually, lists shall be prepared that identify all parts projected for purchase during the subsequent 12-month period. Priority should be given to those parts with the greatest expected return given their annual buy value, life cycle buy value, and likelihood of successful breakout, given technical characteristics such as design and performance stability and the availability of technical data. Parts with an expired suspense date or a suspense date which will expire during the forecast period (see E–203(b)), need only be subjected to the necessary steps of the full screening procedure (see E–303). Parts with a valid code that will not expire during the forecast period need not be screened. Parts coded 0O shall be selected for full screening.

E–301.3 Immediate buy requirements.

An immediate buy requirement will be identified by the user or the item manager in consonance with department/agency regulations. When an immediate buy requirement meeting the screening criteria (see E–104(b)) is generated for a part not assigned a current AMC/AMSC, the part shall be promptly screened in accordance with either the full or limited screening procedures (see E–303 and E–304).

E–301.4 Suspect AMC/AMSC.

Whenever an AMC/AMSC is suspected of being inaccurate by anyone, including the contracting officer, a rescreening shall be conducted for that part. Suspect codes include codes composed of invalid combinations of AMCs and AMSCs, those which do not truly reflect how a part is actually being acquired, and those suspected of being more restrictive than necessary for the next buy.

E–302 Screening.

(a) Screening procedures include consideration and recording of the relevant facts pertaining to breakout decisions. The objective of screening is to improve the acquisition status by determining the potential for competition, or purchase from an actual manufacturer. Consideration of any reasonable approach to establishing competition should be an integral part of the breakout process.

(b) Screening procedures may vary depending on circumstances related to the parts. No set rules will provide complete guidance for making acquisition method decisions under all conditions encountered in actual practice. An informed coding decision can be made without following the procedures step by step in every case.

(c) Activities involved in screening are encouraged to develop supplemental procedures which prove effective in meeting this regulation's objectives. These procedures should be tailored to the particular activity's operating environment and the characteristics of the parts for which it is responsible. Nevertheless, care should be taken in all cases to assure that—

(1) Responsible judgment is applied to all elements involved in the review of a part;

(2) The necessary supporting facts are produced, considered, and recorded in the breakout screening file. The breakout screening file contains technical data and other documents concerning screening of the part;

(3) All cost effective alternatives are considered for establishing competition, or purchase from an actual manufacturer (see E–105(d)(6)); and

(4) When possible, the sequence of the review allows for accomplishing several screening steps concurrently.

(d) Contractor participation in the decision making process extends only to providing technical information. This technical information is provided by supporting documentation (DD Forms 1418, Contractor Technical Information Record, and DD Form 1418–1, Technical Data Identification Checklist) which includes the CTIC assignment. Government personnel shall substantiate the breakout decision by reference to the CTIC and by careful review of the supporting documentation. However, the CTIC provides guidance only, and it should be used as one of the inputs to arrive at an acceptable AMC and AMSC coding.

(e) Contractor's technical information furnished in accordance with MIL–STD–789 may indicate areas requiring additional research by the Government before screening can be completed. Seldom will industry's contribution to the screening process enable the Government to assign an AMC or AMSC without additional review.

(f) During the screening process, it may be appropriate to communicate with industry, particularly potential manufacturers of a part, to determine the feasibility of establishing a competitive source and to estimate the costs and technical risks involved.

(g) Coding conferences with industry shall be documented.

(h) Screening may disclose a part is not suitable for competitive acquisition, but it may be possible to breakout the part for direct purchase from the actual manufacturer or to establish a second source. Parts particularly suited to direct purchase are those where neither the design control activity nor the prime contractor contribute additional value or whose data belong to the actual manufacturer and will not be acquired by the Government, and where that manufacturer exercises total responsibility for the part (design and quality control, testing, etc.), and where additional operations performed by the prime contractor can be performed by the actual manufacturer or by the Government.

(i) For each part that is screened, a file shall be established to document and justify the decisions and results of all screening effort (see E–105(d)(6)).

(j) Full and limited screening procedures are two elements of breakout programs. Other spare parts initiatives to enhance breakout are reverse engineering, bailment, data rights challenges, and publication of intended buy lists. Integration of other initiatives within the screening processes developed at each activity is encouraged.

E–303 Full screening procedures.

(a) Full screening procedures should be developed so that the potential is fully evaluated for establishing competition or purchase from an actual manufacturer. Also, full screening procedures should facilitate accurate and consistent acquisition method code assignment. It is expected that each activity will develop its own operational screening procedures. A general model, full screening decision process is provided below to support the development of activity level procedures and to provide guidance regarding the general scope of these procedures. The full screening procedures involve 65 steps in the decision process, and are divided into the following phases—

(1) Data collection;
(2) Data evaluation;
(3) Data completion;
(4) Technical evaluation;
(5) Economic evaluation; and
(6) Supply feedback.

(b) The six phases describe different functions that must be achieved during screening. The nature of the screening process does not permit clear distinction of one phase from another. Further, the order of performance of these phases may not correspond to the order listed here. In fact, the phases will often overlap and may be performed simultaneously. Their purpose is to identify the different functions comprising the screening process.

(c) A summary flow chart of the decision steps is provided as Exhibit II to assist in understanding the logical order of the full screening steps for various conditions. Use of the flow chart in connection with the text that follows is essential to fully understand the order of the steps in the process.

E–303.1 Data collection phase (step 1).

(a) Assemble all available data and establish a file for each part. Collect identification data, relevant data obtained from industry, contracting and technical history data and current status of the part, including—

(1) Normal identification required for cataloging and standardization review;
(2) All known sources;
(3) Historical contracting information, including the more recent awards, date of awards, and unit price(s) for the quantities prescribed;
(4) Identification of the actual manufacturer(s), the latest unit price and the quantity on which the price is based. (When the actual manufacturer is not the design control activity, the design control activity may be consulted to ensure the latest version of the item is being procured from the actual manufacturer);
(5) Identification of the activity, Government or industry, having design control over the part and, if industry, the cognizant Government engineering activity;
(6) The expected life in the military supply system;
(7) Record of any prior review for breakout, with results or findings; and
(8) Annual demand.

(b) In the case of complex items requiring large numbers of drawings, collection of a reasonable technical data sample is sufficient for the initial technical data evaluation phase (steps 2–14).

E–303.2 Data evaluation phase (steps 2–14).

(a) Data evaluation is crucial to the whole review procedure. It involves determination of the adequacy of the technical data package and the Government's rights to use the data for acquisition purposes.

(b) The data evaluation process may be divided into two stages—

(1) A brief but intensive analysis of available data and documents regarding both technical matters and data rights, leading to a decision whether to proceed with screening; and

(2) If the decision is to proceed with screening, further work is necessary to produce an adequate technical data package, such as research of contract provisions, engineering work on data and drawings, and requests to contractors for additional data.

(c) The steps in this phase are—(1) *Step 2.* Are full Government rights established by the available data package? Evidence for an affirmative answer would include the identification of Government drawings, incorporation by reference of Government specifications or process descriptions in the public

domain, or reference to contract provisions giving the Government rights to data. If the answer is negative, proceed to step 3; if positive, proceed to step 6.

(2) *Step 3.* Are the contractor's limitations of the Government's rights to data established by the available data package?

(i) The questions in step 2 and 3 are not exclusive. The incorporation in a drawing of contract provisions reserving rights to the manufacturer, either in the whole design or in certain manufacturing processes, would establish a clear affirmative answer to step 3 where there is substantiating Government documentation. Parts not in this group shall be retained for further processing (see step 20). Data rights that cannot be substantiated shall be challenged (see DFARS Part 227, validation procedures).

(ii) In the case of clear contractor ownership of rights, proceed with steps 4 and 5.

(3) *Step 4.* Are there bases for competitive acquisition without using data subject to limitations on use? This question requires consideration, for example, of the possibility of using performance specifications or substitution of military or commercial specifications or bulletins for limited elements of the manufacturing process. The use of sample copies is another possibility.

(4) *Step 5.* Can the Government buy the necessary rights to data? This is a preliminary question to the full analysis (in steps 20 and 21 below) and is designed primarily to eliminate from further consideration those items which incorporate established data restrictions and for which there are no other bases for competitive acquisition nor is purchase of rights possible or feasible.

(5) *Steps 6 and 7.* Is the present technical data package adequate for competitive acquisition of a reliable part?

(6) *Steps 8 and 9.* Specify omissions. The question in steps 6 and 7 requires a critical engineering evaluation and should deal first with the physical completeness of the date—are any essential dimensions, tolerances, processes, finishes, material specifications, or other vital elements of data lacking from the package? If so, these omissions should be specified. A second element deals with adequacy of the existing package to produce a part of the required performance, compatibility, quality, and reliability. This will, of course, be related to the completeness of data. In some cases, qualified engineering judgment may decide that in spite of apparently complete data, the high performance or other critical characteristics of the item require retention of the present source. If such decision is made, the file shall include documentation in the form of specific information, such as difficulties experienced by the present manufacturer in producing a satisfactory item or the existence of unique production skills in the present source.

(7) *Steps 10 and 11.* Can the data be developed to make up a reliable technical data package? This implies a survey of the specified omissions with careful consideration to determine the resources available to supply each missing element. Such resources will vary from simple referencing of standard engineering publications to more complex development of drawings with the alternatives of either obtaining such drawings or developing performance specifications. In some cases, certain elements of data are missing because they have been properly restricted. If, however, there has been no advance substantiation of the right to restrict, the part should be further researched. If the answer to this question is negative, proceed to step 12; if positive, proceed to step 13 or 14.

(8) *Step 12.* If the answer to the question in steps 10 and 11 is no, which condition is the prime element in this decision, the lack of data or the unreliability of the data? Specific documentation is needed to support this decision.

(9) *Steps 13 and 14.* Estimate the time required to complete the data package. In those cases where the data package is found inadequate and specific additions need to be developed, an estimate of the time required for completion must be made in order to determine if breakout of the part is feasible during this review cycle and to estimate at what point in the remaining life of the part the data package could be available.

E–303.3 Data completion phase (steps 15–21).

(a) The data completion phase involves acquiring or developing the missing elements of information to reach a determination on both adequacy of the technical data package and the restriction of rights to data. It may involve various functional responsibilities, such as examination of past contracts, queries directed to industry or to other Government agencies, inspection of the part, reverse or other engineering work to develop drawings and write specifications, arrangements with the present source for licensing or technical assistance to new manufacturers, and negotiations for purchase of rights to data. Additional research and information requests should be expeditiously initiated on those parts where there is a reasonable expectation of breakout. Because this phase is time-consuming, it should take place concurrently with other phases of the review.

(b) At the beginning of the data completion phase, the part falls into one of the following four steps—

(1) *Step 15.* The data package is complete and adequate and the Government has sufficient rights for acquisition purposes. Such parts require no further data analysis. Proceed to step 22.

(2) *Step 16.* The Government has rights to existing data. The data package is incomplete but there is a reasonable expectation

that the missing elements can be supplied. Proceed to step 19.

(3) *Step 17.* The data package is complete, but suitable Government rights to the data have not been established. Proceed to step 20.

(4) *Step 18.* Neither rights nor completeness of data is adequately established; therefore, the part requires further research. Proceed to step 20.

(c) *Step 19.* Obtain or develop the necessary data for a suitable data package. Reverse engineering to develop acquisition data may be used if there is a clear indication that the costs of reverse engineering will be less than the savings anticipated from competitive acquisition. If there is a choice between reverse engineering and the purchase of data (step 21), the decision shall be made on the basis of relative costs, quality, time, and other pertinent factors.

(d) *Step 20.* Establish the Government's and contractor's rights to the data. Where drawings and data cannot be identified to a contract, the following guidelines should be applied—

(1) Where drawings and data bear legends which warn of copyright or patent rights, the effect of such legends shall be resolved according to law and policy; however, the existence of patent or copyright restrictions does not per se preclude securing competition with respect to the parts described (see FAR Subpart 27.3/DFARS Subpart 227.3).

(2) If the technical data bears legends which limit the Government's right to use the data for breakout and it is determined that reasonable grounds exist to question the current validity of the restrictive markings, the contracting officer will be notified to initiate the validation procedures at DFARS Subpart 227.4.

(3) Where drawings and data are unmarked and, therefore, free of limitation on their use, they shall be considered available for use in acquisition, unless the acquiring office has clear evidence to the contrary (see DFARS Subpart 227.4).

(4) The decision process in situations described in paragraphs (d) (1), (2), and (3) of this subsection requires the exercise of sound discretion and judgment and embraces legal considerations. In no case shall a decision be made without review and approval of that decision by legal counsel.

(5) If the validation procedures in paragraph (d)(2) of this subsection establish the Government's right to use the data for breakout, the Government shall attempt to obtain competition pursuant to the decisions resulting from concurrent technical and economic evaluation.

(e) *Step 21.* If restrictions on the use of data are established, determine whether the Government can buy rights to the required data. Use the procedure in DFARS Subpart 227.4.

E–303.4 Technical evaluation phase (steps 22–37).

(a) *Introduction.* (1) The purposes of technical evaluation are to determine the development status, design stability, high performance, and/or critical characteristics such as safety of personnel and equipment; the reliability and effective operation of the system and equipment in which the parts are to be used; and to exercise technical judgment as to the feasibility of breaking out the parts. No simple and universal rules apply to each determination. The application of experience and responsible judgment is required. Technical considerations arise in several elements of the decision process, e.g., in determining adequacy of the data package (steps 6–14).

(2) Certain manufacturing conditions may reduce the field of potential sources. However, these conditions do not justify the restriction of competition by the assignment of restrictive AMCs for the following reasons—

(i) *Parts produced from class 1 castings and similar type forgings.* The process of developing and providing the acceptability of high-integrity castings and forgings requires repetitive performance by a controlled source for each casting or forging along identical lines to those which result in initial acceptability of the item. The particular manufacturer's process becomes the controlling factor with regard to the acceptability of any such item. However, other firms can produce class 1 castings and similar type forgings and provide the necessary inspection, or the part may be acquired from other sources which use castings or forgings from approved (controlled) source(s).

(ii) *Parts produced from master or coordinated tooling, e.g., numerically controlled tapes.* Such parts have features (contoured surfaces, hole locations, etc.) delineated according to unique master tooling or tapes and are manufactured to minimum/maximum limits and must be replaceable without additional tailoring or fitting. These parts cannot be manufactured or configured by a secondary pattern or jigs independent of the master tooling and cannot be manufactured to requisite tolerances of fit by use of commercial precision machinery. In this context, jigs and fixtures used only for ease of production are not considered master tooling. However, master tooling may be reproduced.

(iii) *Parts requiring special test and/or inspection facilities to determine and maintain ultra-precision quality for the function or system integrity.* Substantiation and inspection of the precision or quality cannot be accomplished without specialized test or inspection facilities. Testing is often done by the actual manufacturer under actual operating use. However, such special test inspection facilities may be available at other firms.

(b) *Design procedures (steps 22–31).* (1) *Step 22.* Will a design change occur during anticipated lead time? If affirmative, proceed to step 23; if negative, proceed to step 24.

(2) *Step 23.* Specify the design change and assign an appropriate code.

(3) *Step 24.* Is a satisfactory part now being produced? Concurrently with the research and completion of data, a technical determination is required as to the developmental status of the part. With the frequent telescoping of the development/production cycle as well as constant product improvement throughout the active life of equipment, parts are frequently subject to design changes. The present source, if a prime contractor, is usually committed to incorporate the latest changes in any deliveries under a production order. In considering the part for breakout, an assessment must be made of the stability of design, so that in buying from a new source the Government will not be purchasing an obsolete or incompatible part. The question of obsolescence or noncompatibility is to some extent under Government control. Screening for breakout on parts that are anticipated to undergo design change should be deferred until design stability is attained.

(4) *Step 25.* Can a satisfactory part be produced by a new source? Determine whether technical reasons prohibit seeking a new source. The fact that the present source has not yet been able to produce a satisfactory part (step 24) does not preclude another source from being successful. If the answer to step 24 or 25 is affirmative, proceed simultaneously to steps 27 and 38. If the answer to step 25 is negative, proceed to step 26.

(5) *Step 26.* If the present source is producing an unsatisfactory part, but technical reasons prohibit seeking a new source, specify the reasons.

(6) *Step 27.* Does the part require prior qualification or other approval testing? If the answer is positive, proceed to step 28; if negative, proceed to step 32.

(8) *Step 28.* Specify the requirement.

(9) *Step 29.* Estimate the time required to qualify a new source.

(10) *Step 30.* Is there currently a qualified source?

(11) *Step 31.* Who is responsible for qualifications of the subcontractor, present prime contractor, the Government, or an independent testing agency?

(i) If a qualified source is currently in existence, the review should consider who will be responsible for qualification in the event of competitive acquisition. If qualification testing is such that it can be performed by the selected source under a preproduction or first article clause in the contract, the costs of initial approval should be reflected in the offers received. If the part requires initial qualification tests by some other agency such as the present prime contractor, the Government, an independent testing agent outside the Government, or by technical facilities within the departments, out-of-pocket costs may be incurred if the part is competed. An estimate of qualification costs should then be made and recorded in such cases.

(ii) Where facilities within the Government are not adequate for testing or qualification, or outside agencies such as the equipment contractor cannot or will not do the job, the economics of qualification may be unreasonable, and a narrative statement of these facts should replace the cost estimate. Whenever possible, such as in the case of engine qualification tests, economy of combined qualification tests should be considered.

(c) *Quality assurance procedures (steps 32–33).* Quality control and inspection is a primary consideration when making a decision to breakout. Where the prime contractor performs quality assurance functions beyond those of the part manufacturer or other sources, the Government may—

(1) Develop the same quality control and inspection capability in the manufacturer's plant;

(2) Assume the responsibility for quality; or

(3) Undertake to obtain the quality assurance services from another source, possibly the prime contractor.

(4) *Step 32.* Who is now responsible for quality control and inspection of the part?

(5) *Step 33.* Can a new source be assigned responsibility for quality control? Is the level of the quality assurance requirements specified in the system contract necessary for the screened part? The minimum quality assurance procedures for each part shall be confirmed.

(i) A new source shall be considered if—

(A) Any essential responsibility (e.g., burn-in, reliability, maintainability) retained by the prime contractor for the part and its relationship to the end item can be eliminated, shifted to the new source, or assumed by the Government;

(B) The prime contractor will provide the needed quality assurance services;

(C) The Government can obtain competent, impartial services to perform quality assurance responsibility; or

(D) The new source can maintain an adequate quality assurance program, inspection system, or inspection appropriate for the part.

(ii) If the prime contractor has responsibility for quality that a new source cannot assume or obtain, or that the Government cannot undertake or eliminate, consideration of the new source is precluded.

(d) *Tooling procedures (steps 34–37).* (1) *Step 34.* Is tooling or other special equipment required?

(2) *Step 35.* Specify the type of tooling.

(3) *Step 36.* Estimate additional acquisition leadtime for setup and for tooling.

(4) *Step 37.* Does the Government possess this tooling? If tooling or special equipment is required for production of the part, the types and quantities should be specified. Investigation can then be made as to whether the Government possesses such tooling and can make it available to a new source. A requirement for special tooling is not necessarily a deterrent to competitive solicitation for parts. The Government may find it desirable to purchase the needed tooling and furnish it to the new source. In this case, the costs can be determined with reasonable accuracy. However, if new sources can provide the tooling or special equipment, this will be reflected in competitive prices and should not normally require further analysis.

E–303.5 Economic evaluation phase (steps 38–56).

(a) Economic evaluation concerns identification and estimation of breakout savings and direct cost offsets to breakout. The economic evaluation phase is composed of the three segments detailed in paragraphs (b) through (d) of this subsection.

(b) *Development of savings data (steps 38–40).* (1) *Step 38.* Estimate remaining program life cycle buy value.

(2) *Step 39.* Apply either a savings factor of 25 percent or one determined under local conditions and experience.

(3) *Step 40.* Multiply the remaining program life cycle buy value by the savings factor to obtain the expected future savings, if the part is coded for breakout.

(c) *Computation of breakout costs (steps 41–47).* Several groups of costs must be collected, summarized and compared to estimated savings to properly determine the economics of breakout. These costs include—

(1) *Direct costs (steps 41–45).* Direct costs of breakout normally include all expenditures which are direct and wholly identifiable to a specific, successful breakout action, and which are not reflected in the part unit price. Examples of direct costs include Government tooling or special test equipment, qualification testing, quality control expenses, and industry participation costs (such as completion of the Contractor Technical Information Data Record) if borne by the Government.

(i) Step 41. Estimate the cost to the Government for tooling or special equipment.

(ii) Step 42. Estimate the cost, if any, to the Government for qualifying the new source.

(iii) Step 43. Estimate the cost, if any, to the Government for assuring quality control, or the cost of contracting for quality control.

(iv) Step 44. Estimate the cost to the Government for purchasing rights to data.

(v) Step 45. Add estimated total direct costs to the Government to breakout the item.

(2) *Performance specification costs (steps 46–47).* (i) Step 46. Is the breakout candidate constructed to a performance specification?

(ii) Step 47. If the answer is yes in step 46, add performance specification breakout cost estimate elements to the result of step 45. The addition of an unknown number of nonstocked parts which must be stocked by the supply system for repairs is a significant element of cost associated with the decision to compete a performance specification assembly. (The same situation does not arise with respect to a design specification assembly since virtually all spare parts used to repair such an assembly are essentially identical to parts already in the assembly.) The cost of introducing these nonstocked parts into the system includes—

(A) Additional catalog costs. The number of nonstocked parts forecasted to be in the competed assembly, multiplied by the variable cost of cataloging per line item.

(B) Additional bin opening costs.

The number of nonstocked parts forecasted to be in the competed assembly, multiplied by the variable cost of a bin opening at each of the locations where the part is to be stocked.

(C) Additional management costs. The number of nonstocked parts forecasted to be in the competed assembly, multiplied by the variable cost of management per line item.

(D) Additional technical data costs. The cost of a new set of technical data for the competed assembly, including the variable expenses of its production, reproduction, and distribution.

(E) Additional repair tools and test equipment costs. The costs of additional special tools and test equipment not otherwise required by the existing assembly.

(F) Additional logistics support costs. The costs associated with the new item such as spare and repair parts, technical manuals, and training.

(d) *Comparison of savings and costs (steps 48–56).* Compare estimated breakout costs to forecasted breakout savings. If costs exceed estimated savings, it will be uneconomical to compete the part. Performance specification parts should be analyzed to ensure that pertinent breakout costs have been considered and, if it is not economical to breakout the part, whether an appropriate detailed design data package reduces costs sufficiently to make breakout economical.

(1) *Step 48.* Compare total costs of breakout (step 47) to estimated savings (step 40).

(2) *Step 49.* Are costs of breakout greater or less than estimated savings? If greater, proceed to step 50; if yes, proceed to step 51.

(3) *Step 50.* Is the breakout candidate constructed to a performance specification? If

no, proceed to step 54; if yes, proceed to step 57.

(4) *Step 51.* Is it appropriate to obtain a detailed design data package? If yes, proceed to step 52; if no, proceed to step 54. The decision to change a performance specification part to a detailed design part obviously requires a critical engineering examination of the part itself, as well as a review of the impact such a change might have on the operational effectiveness of the system in which the equipment is to be employed. Acquisition of a performance specification part by a subsequently acquired design specification subjects the Government to the additional hazard of losing the money paid for the development of the design specification, should the design be altered during the contracting leadtime period. Accordingly, the engineering evaluation should closely review design stability over the anticipated contracting leadtime in order to avoid acquiring an obsolete or nonstandard part if the decision is made to compete it.

(5) *Step 52.* Add the estimated cost of obtaining a detailed design data package to the results of step 45.

(6) *Step 53.* If the results of step 52 are less than the estimated savings, initiate action to obtain a detailed design data package. Proceed to step 54 to code the part for a period until it can be rescreened using the design specification package. The code determined in this screening shall be assigned a suspense date commensurate with the leadtime required to obtain the detailed design data package (see E–203(b)).

(7) *Step 54.* Is the part manufactured by the prime contractor? If yes, code the part AMC 3; if no, proceed to step 55.

(8) *Step 55.* Can the part be acquired directly from the actual manufacturer? If no, proceed to step 56; if yes, code the part AMC 3 or 4, as applicable.

(9) *Step 56.* Specify the reasons for inability to obtain the part from the actual manufacturer. Code the part AMC 5.

E–303.6 Supply feedback phase (steps 57–65).

(a) The supply feedback phase of the analysis is the final screening phase for breakout parts. This phase in completed for all AMC 2 parts to determine if sufficient time is available to breakout on the immediate buy and to communicate this information to the inventory manager responsible for the requirement. First, all additional time factors required to breakout the part are added. Total time is subtracted from the immediate and future buy date and the result compared to the current date. (Note: Not all time factors listed apply to each part screened.) If the result is the same or earlier than the required contract date, the part is coded competitive and action is begun to qualify additional sources as necessary. If the result is later than the required contract date, action to compete the immediate buy quantity should be initiated if the inventory manager can find some means of accepting later delivery. If this is impossible, the appropriate records should be annotated for competitive acquisition of the next replenishment buy quantity. If late delivery is acceptable, the inventory manager should compute requirements for the part and initiate an appropriate purchase requisition.

(b) *Procedures.* (1) *Step 57.* Add all additional time factors required to breakout the part (steps 13, 14, 29, and 36).

(2) *Step 58.* Add the results of step 57 to the date of this review.

(3) *Step 59.* Compare the result of step 58 to the date that the contract or order must be placed.

(4) *Step 60.* Is the result of step 59 earlier than, later than, or the same as the contract or order date? (If earlier or the same, proceed to step 61; if later, proceed to step 63.)

(5) *Step 61.* Can supply accept late delivery? If yes, proceed to step 62; if no, proceed to step 63.

(6) *Step 62.* Notify the inventory manager to compute requirements and initiate a purchase requisition. Proceed to step 64.

(7) *Step 63.* Code the part AMC 2. Insufficient time to compete on this buy.

(8) *Step 64.* Code the part AMC 2.

(9) *Step 65.* Begin actions to qualify new sources, if required and possible.

E–304 Limited screening procedures.

(a) Limited screening procedures are only appropriate when the full screening process cannot be completed for a part in sufficient time to support an immediate buy requirement. If limited screening does not result in a competitive AMC and the part is characterized by a high buy value and high buy quantity in the annual buy forecast, full screening procedures shall be immediately initiated.

(b) Limited screening procedures cover only the essential points of data and technical evaluations more completely described in full screening procedures (see E–303). Extensive legal review of rights or technical review of data is not required; nor is backup information on type and extent of qualification testing, quality control procedures and master tooling required. A summary flow chart of the limited screening decision steps is provided at Exhibit III.

(c) The limited screening decision steps are followed sequentially if the answer to the question in each step is affirmative. If any step is answered in the negative, proceed directly to step 10.

(1) *Step 1.* Assemble all available data and establish a file for each part. Collect identification data, relevant data obtained from industry, contracting and technical history

data and current status of the part (see E–303.1).

(2) *Step 2.* Do the available documents establish Government rights to use the data for acquisition purposes? If the Government's rights to use data in its possession is questionable, resolution of the rights must continue beyond award of the immediate buy.

(3) *Step 3.* Is the data package sufficient, accurate, and legible? If the Government does not have in its possession sufficient, accurate, or legible data, action shall be promptly initiated to resolve the deficiency for the next buy.

(4) *Step 4.* Is the design of the part stable over the anticipated acquisition leadtime?

(5) *Step 5.* Is a satisfactory part now being produced?

(6) *Step 6.* Can the part be acquired from a new source without prior qualification testing or other approval testing?

(7) *Step 7.* Can the Government or a new source be responsible for quality assurance?

(8) *Step 8.* Can the part be manufactured without master or coordinated tooling or other special equipment; if no, is there more than one source which has the tooling or special equipment?

(9) *Step 9.* Assign AMC 2. Proceed to step 11.

(10) *Step 10.* Assign AMC 3, 4, or 5, as appropriate.

(11) *Step 11.* Establish the date of the next review (see E–104(c) and E–203(b)).

Part 4—Contractor's Assistance

E–400 General.

(a) Contractor's assistance in screening shall be requested on provisioned and replenishment parts after consideration of the benefit expected from the contractor's technical information and the cost to the Government of obtaining such assistance.

(b) Contractor's assistance shall not be requested for parts covered by Government/industry specifications, commercially available parts or parts for which data is already available.

(c) Arrangements entered into with contractor to obtain technical information shall provide that—

(1) Contractors will exert their best effort to make impartial technical evaluations using applicable technical data and the experience of competent personnel; and

(2) No costs to the Government will be incurred for duplicate screening of parts.

E–401 Contractor's technical evaluation procedures.

(a) Contractor's technical evaluation for the screening process shall be required contractually by incorporating MIL–STD–789, which delineates the contractor's responsibilities and procedures and prescribes use of the contractor DD Form 1418, Technical Information Record, and the DD Form 1418–1, Technical Data Identification Checklist, a copy of each document listed on DD Form 1418–1, and other substantive data that was used in developing the contractor's recommendations.

(b) When MIL–STD–789 is incorporated in a contract, the DD Form 1423, Contract Data Requirements List, shall specify the requirement for the submission of DD Form 1418, Technical Information Record, and DD Form 1418–1, Technical Data Identification Checklist, in accordance with MIL–STD–789.

Part 5—Reporting System

E–500 General.

This part prescribes reports regarding the breakout program which cannot be obtained from other sources. These reports are used to evaluate the effectiveness of breakout programs, establish a baseline for all spare part acquisitions, and identify trends in spare parts acquisition.

E–501 Reports.

(a) *Spare Parts Breakout Screening Report (RCS DD P&L(Q&SA)714A).* This is a cumulative semi-annual report reflecting the accomplishments of the breakout program. The report describes the results of full and limited screening for provisioning and replenishment parts by number of different NSNs for each AMC. Departments and agencies shall also maintain actual cost data attributable to the Spare Parts Breakout Program which shall be forwarded on this report semi-annually.

(b) *Spare Parts Acquisition Report (RCS DD P&L(Q&SA) 714B).* This is a cumulative semi-annual report for all purchases made of spare parts during the current fiscal year. This report describes the number and extended dollar value of different NSNs purchased for each AMC. Departments and agencies shall also maintain actual savings (or cost avoidance) data attributable to the Spare Parts Breakout Program which shall be forwarded on this report semi-annually. Because of extraneous factors such as contracting leadtimes and changes in spare parts requirements, this report will not always reflect the acquisition of the parts screened during a reporting period (contained on the Spare Parts Breakout Screening Report). Also, it will not show in all instances how the part was actually acquired. This report is intended to be an indication of the success of the breakout program, and designed to show trends in the coding and data available to buyers in the acquisition package.

E–502 Reporting procedures.

(a) Departments and agencies shall maintain and forward semi-annual reports. The second semi-annual report in a fiscal year

shall reflect cumulative totals for the current fiscal year using the formats in Exhibits IV and V.

(b) The reports will be due no later than 45 days after the end of each period designated.

(c) Submissions will be made to the Assistant Secretary of Defense (Production and Logistics), ATTN: Deputy Assistant Secretary for Logistics.

E–503 Reporting instructions.

(a) *Spare parts breakout screening report.* Using the format in Exhibit IV, provide the following—

(1) Enter reporting activity name, fiscal year, and period ending.

(2) For each AMC/AMSC listed, enter the number of different NSNs for which screening was completed during the period. Show zeros where applicable. This should be done for both full and limited screening.

(3) Report the total costs of the breakout program incurred for the period. Although this will be primarily labor costs, it should also include appropriate prorated costs of ADP services, office overhead, data retrieval service costs, etc. (see E–303.5).

(b) *Spare parts acquisition report.* Using the format in Exhibit V, provide the following—

(1) Enter reporting activity name, fiscal year, and period ending.

(2) For each AMC/AMSC listed, enter the number of different NSNs purchased during the current fiscal year and their extended dollar value.

(3) Report the actual breakout program savings or cost avoidances as measured by completed acquisition (not anticipated acquisitions). Price differentials should be measured on each acquisition where a breakout action has taken place. They should equal the difference between the previous contract unit price and the current contract unit price, times the number of units purchased.

EXHIBIT I—VALID AMC/AMSC COMBINATIONS

Acquisition Method Code (AMC)

AMSC	0	1	2	3	4	5
A	X	o	o	o	o	o
B	X	o	o	o	o	o
C	X	o	o	o	o	o
D	X	X	X	o	o	o
G	X	o	o	X	X	X
H	X	o	o	o	o	o
K	X	o	o	o	o	o
L	X	o	o	o	o	o
M	X	o	o	o	o	o
N	X	o	o	o	o	o
O	o	X	X	X	X	X
P	X	o	o	o	o	o
Q	X	o	o	o	o	o
R	X	o	o	o	o	o
S	X	o	o	o	o	o
T	X	o	o	X	X	X
U	X	o	o	o	o	o
V	X	o	o	o	o	o
Y	X	o	o	o	o	o
Z	X	o	o	o	o	o

o = Valid Combinations.
X = Invalid Combinations.

EXHIBIT II—FULL SCREENING DECISION PROCESS SUMMARY FLOW CHART

NOTE: Exhibit II appears in the 1991 Looseleaf Edition of the Defense FAR Supplement. Copies can be obtained from: Defense Acquisition Regulations System, OUSD(A), Washington, DC 20301–3000.

EXHIBIT III--LIMITED SCREENING DECISION PROCESS SUMMARY FLOW CHART

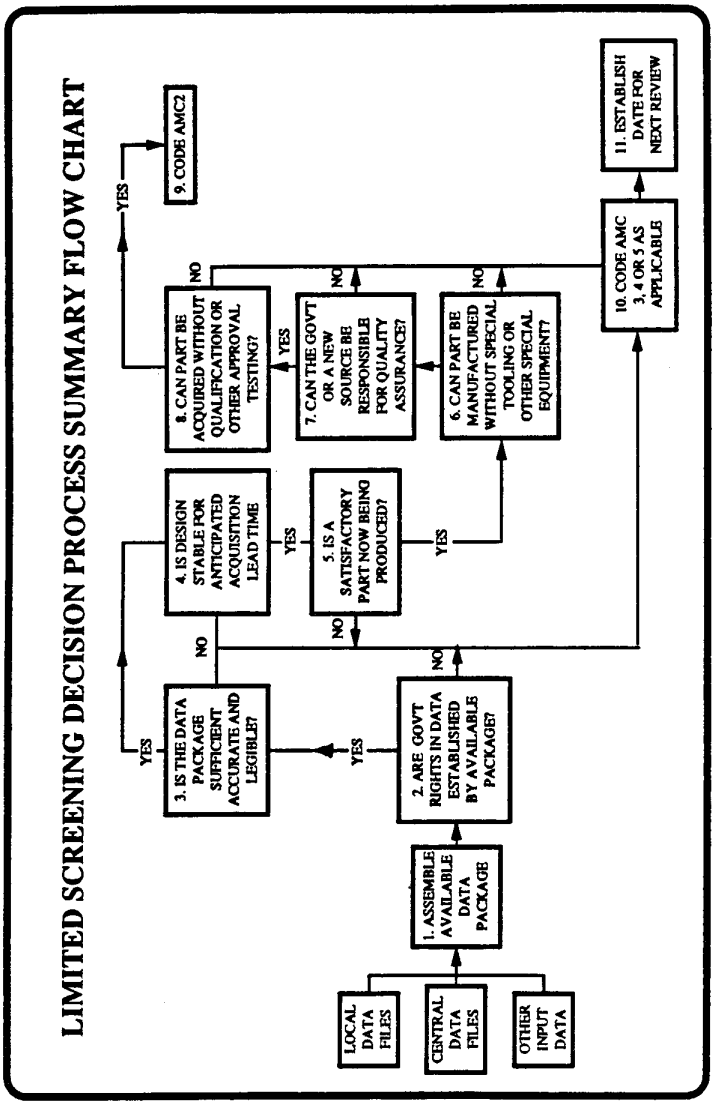

EXHIBIT IV--SPARE PARTS BREAKOUT SCREENING REPORT

SPARE PARTS BREAKOUT SCREENING REPORT

Report Activity_____ Fiscal Year_____ Period Ending_____

NUMBER OF NSNs

AMC/AMSC	LIMITED SCREENING	FULL SCREENING	TOTAL SCREENING
*1G Only			
1			
**2G Only			
2			
3			
4			
5			
TOTAL			

SPARE PARTS BREAKOUT PROGRAM COSTS $_____

*Excluded from AMC 1 data
**Excluded from AMC 2 data

EXHIBIT V--SPARE PARTS ACQUISITION REPORT

SPARE PARTS ACQUISITION REPORT

Report Activity_____ Fiscal Year_____ Period Ending_____

P U R C H A S E M A D E

AMC/AMSC	NUMBER OF NSNs	EXTENDED DOLLAR VALUE
*1G Only		
1		
**2G Only		
2		
3		
4		
5		
TOTAL		

SPARE PARTS BREAKOUT PROGRAM SAVINGS OR COST AVOIDANCES $_____

*Excluded from AMC 1 data
**Excluded from AMC 2 data

[56 FR 36595, July 31, 1991, as amended at 58 FR 37868, July 14, 1993]

APPENDIX F—MATERIAL INSPECTION AND RECEIVING REPORT

Sec.

Part 1—Introduction
F–101 General.
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F–401 Distribution.
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F–702 Corrected DD Form 250–1.

AUTHORITY; 41 U.S.C. 421 and 48 CFR chapter 1.

PART 1—INTRODUCTION

F–101 General.

This appendix contains procedures and instructions for the use, preparation, and distribution of the material inspection and receiving report (MIRR) (DD Form 250 series) and commercial shipping/packing lists used to document Government contract quality assurance.

F–102 Applicability.

(a) The provisions of this appendix apply to supplies or services acquired by DoD when the clause at 252.246–7000, Material Inspection and Receiving Report, is included in the contract. If the contract contains the clause at FAR 52.213–1, Fast Payment Procedure, the contractor may elect not to prepare a DD Form 250.

(b) When DoD provides quality assurance or acceptance services for non-DoD activities, prepare a MIRR using the instructions in this appendix, unless otherwise specified in the contract.

F–103 Use.

(a) The DD Form 250 is a multipurpose report used—(1) To provide evidence of Government contract quality assurance at origin or destination;

(2) To provide evidence of acceptance at origin or destination;

(3) For packing lists;

(4) For receiving;

(5) For shipping;

(6) As a contractor invoice; and

(7) As commercial invoice support.

(b) Do not use the DD Form 250 for shipments—(1) By subcontractors, unless the subcontractor is shipping directly to the Government; or

(2) Of contract inventory.

(c) The contractor prepares the MIRR, except for entries that an authorized Government representative is required to complete.

(d) Use the DD Form 250–1—(1) For bulk movements of petroleum products by tanker or barge to cover—

(i) Origin or destination acceptance of cargo; or

(ii) Shipment or receipt of Government owned products.

(2) To send quality data to the point of acceptance in the case of origin inspection on FOB destination deliveries or preinspection at product source. Annotate the forms with the words ''INSPECTED FOR QUALITY ONLY.''

F–104 Application.

(a) *DD Form 250.* (1) Use the DD Form 250 for delivery of contract line, subline, exhibit line, or exhibit subline items. Do not use the DD Form 250 for those exhibit line or exhibit subline items on a DD Form 1423, Contract Data Requirements List, that indicate no DD Form 250 is required.

(2) If the shipped to, marked for, shipped from, mode of shipment, contract quality assurance and acceptance data are the same for more than one shipment made on the same day under the same contract, contractors may prepare one MIRR to cover all such shipments.

(3) If the volume of the shipment precludes the use of a single car, truck, or other vehicle, prepare a separate MIRR for the contents of each vehicle.

(4) When a shipment is consigned to an Air Force activity and the shipment includes items of more than one federal supply class (FSC) or material management code (MMC), prepare a separate DD Form 250 for items of each of the FSCs or MMCs in the shipment. However, the cognizant Government representative may authorize a single DD Form 250, listing each of the FSCs or MMCs included in the shipment on a separate continuation sheet. The MMC appears as a suffix to the national stock number applicable to the item.

(5) Consolidation of Petroleum Shipments on a Single MIRR—(i) *Continental United States.* Contractors may consolidate multiple car or truck load shipments of petroleum

made on the same day, to the same destination, against the same contract line item, on one MIRR. To permit verification of motor deliveries, assign each load a load number which can be identified to the shipment number in Block 2 of the DD Form 250. Include a shipping document (commercial or government) with each individual load showing as a minimum—

(A) The shipper;

(B) Shipping point;

(C) Consignee;

(D) Contract and line item number;

(E) Product identification;

(F) Gross gallons (bulk only);

(G) Loading temperature (bulk only);

(H) American Petroleum Institute gravity (bulk only);

(I) Identification of carrier's equipment;

(J) Serial number of all seals applied; and

(K) Signature of supplier's representative.

When acceptance is at destination, the receiving activity retains the shipping document(s) to verify the entries on the consignee copy of the DD Form 250 forwarded by the contractor (reference F–401, Table 1) before signing Block 21B.

(ii) *Overseas.* The same criteria as for continental U.S. applies, except the consolidation period may be extended, if acceptable to the receiving activity, shipping activity, Government finance office, and the authorized Government representative having cognizance at the contractor's facility. In addition, the contractor may include more than one contract line item in each DD Form 250 if the shipped to, marked for, shipped from, mode of shipment, contract quality assurance, and acceptance data are the same for all line items.

(6) *Consolidation of Coal Shipments on a Single MIRR.* Contractors may consolidate multiple railcar or truck shipments of coal made on the same day, to the same destination, against the same contract line items, on one MIRR. To permit verification of truck deliveries, assign each load a load number which can be identified to the shipment number in Block 2 of the DD Form 250 and the analytical test report. Include a commercial shipping document with each individual truck load showing as a minimum—

(i) The shipper;

(ii) The name or names;

(iii) Location and shipping point of the mine or mines from which the coal originates;

(iv) The contract number;

(v) The exact size of the coal shipped; and

(vi) A certified weighmaster's certification of weight for the truckload.

Include a waybill with each rail shipment showing the identical information. To permit verification of rail deliveries, identify each railcar number comprising the shipment to the shipment number in Block 2 of the DD Form 250 and the analytical test report. When acceptance is at destination, the receiving activity must retain the shipping document(s) to verify the entries on the consignee copy of the DD Form 250.

(b) *DD Form 250–1.* (1) Use a separate form for each tanker or barge cargo loaded.

(2) The contractor may report more than one barge in the same tow on a single form if on the same contract and consigned to the same destination.

(3) When liftings involve more than one contract, prepare separate forms to cover the portion of cargo loaded on each contract.

(4) Prepare a separate form for each product or grade of product loaded.

(5) Use a separate document for each tanker or barge cargo and each grade of product discharged.

(6) For discharge, the contractor may report more than one barge in the same tow on a single form if from the same loading source.

F–105 Forms.

(a) Contractors may get MIRR forms from the contract administration office at no cost.

(b) Contractors may print forms provided that the format and dimensions (DD Forms 250 and 250c: 8 1/2 inches x 11 inches, DD Form 250–1: 8 1/2 inches x 14 inches) are identical to the MIRR forms printed by the Government and that the forms are cast to provide for 78 characters per printed image horizontally and 62 lines vertically border to border for the DD Form 250, and 61 lines vertically border to border for the DD Form 250c.

PART 2—CONTRACT QUALITY ASSURANCE (CQA) ON SHIPMENTS BETWEEN CONTRACTORS

F–201 Instructions.

(a) Use the supplier's commercial shipping document/packing list to enter performance of required CQA actions at subcontract level. Make the following entries on the supplier's commercial shipping document/packing list:

Required CQA of listed items has been performed.

_____

(Signature of Authorized Govt. Rep. or DoD Stamp)_____

(Date)

_____

(Typed Name and Office)

(b) Distribution for Government purposes shall be—

(1) One copy with shipment;

(2) One copy for the Government representative at consignee (via mail); and

(3) One copy for the Government representative at consignor.

PART 3—PREPARATION OF THE DD FORM 250 AND DD FORM 250C

F–301 Preparation instructions.

(a) *General.*

(1) Dates shall use seven spaces consisting of the last two digits of the year, three alphabetic month abbreviation, and two digits for the day. For example, 90AUG07, 90SEP24.

(2) Addresses shall consist of the name, street address/P.O. box, city, state, and ZIP code.

(3) Enter to the right of and on the same line as the word ''Code'' in Blocks 9 through 12 and in Block 14—(i) The Commercial and Government Entity Handbook (H4/H8) code,

(ii) DoD Activity Address Directory (DODAAD) code, or

(iii) The Military Assistance Program Address Directory (MAPAD) code.

(4) Enter the DODAAD, CAGE (H4/H8), or MAPAD code in Block 13.

(5) The data entered in the blocks at the top of the DD Form 250c must be identical to the comparable entries in Blocks 1, 2, 3, and 6 of the DD Form 250.

(6) Enter overflow data from the DD Form 250 in Block 16 or in the body of the DD Form 250c with an appropriate cross reference. Do not number or distribute additional DD Form 250c sheets, solely for continuation of Block 23 data as part of the MIRR.

(7) Do not include classified information in the MIRR. MIRRs shall not be classified.

(b) Completion instructions—

(1) Block 1—Proc instrument iden (contract).

(i) Enter the 13 position alpha-numeric basic Procurement Instrument Identification Number (PIIN) of the contract. When applicable, enter the four alpha-numeric call/order serial number which is supplementary to the 13 position basic PIIN. This number is also referred to as the Supplementary Procurement Instrument Identification Number (SPIIN). Use SPIINs for (also see 204.70)—

(A) Delivery orders under indefinite delivery type contracts;

(B) Orders under basic ordering agreements; and

(C) Calls under blanket purchase agreements.

(ii) Except as indicated in paragraph (iii), do not enter supplementary numbers used in conjunction with basic PIINs to identify—

(A) Modifications of contracts and agreements;

(B) Modifications to calls/orders; or

(C) Document numbers representing contracts written between contractors.

(iii) When shipping instructions are furnished by telephone or TWX message and shipment is made before receipt of the confirming contract modification (SF 30, Amendment of Solicitation /Modification of Contract), enter the contract modification six digit number or the two digit call or order number immediately following the PIIN or call/order four digit SPIIN.

(iv) For DoD delivery orders on non-DoD contracts, enter the non-DoD contract number immediately below the PII number.

1. Proc instrument iden (contract)	(Order) No.
DSA400–90–F–1684. GS–000S–61917.	

(v) When a contract number other than PII number is used, enter that contract number.

(2) Block 2—Shipment No. (i) The shipment number has a three alpha character prefix and a four numeric or alpha-numeric serial number.

(A) The prime contractor shall control and assign the shipment number prefix. The shipment number shall consist of three alphabetic characters for each ''Shipped From'' address (Block 11). The shipment number prefix shall be different for each ''Shipped From'' address and shall remain constant throughout the life of the contract. The prime contractor may assign separate prefixes when shipments are made from different locations within a facility identified by one ''Shipped From'' address.

(B) Number the first shipment 0001 for shipments made under the contract or contract and order number shown in Block 1 from each ''Shipped From'' address, or shipping location within the ''Shipped From'' address. Consecutively number all subsequent shipments with the identical shipment number prefix.

(1) Use alpha-numeric serial numbers when more than 9,999 numbers are required. Serially assign alpha-numeric numbers with the alpha in the first position (the letters I and O shall not be used) followed by the three position numeric serial number. Use the following alpha-numeric sequence:

A000 through A999 (10,000 through 10,999)
B000 through B999 (11,000 through 11,999)
Z000 through Z999 (34,000 through 34,999)

(2) When this series is completely used, start over with 0001.

(ii) Reassign the shipment number of the initial shipment where a ''Replacement Shipment'' is involved (Block 16(d)(6)).

(iii) The prime contractor shall control deliveries and on the final shipment of the contract shall end the shipment number with a ''Z.'' Where the final shipment is from other than the prime contractor's plant, the prime contractor may elect either to:

(A) Direct the subcontractor making the final shipment to end that shipment number with a ''Z''; or

(B) Upon determination that all subcontractors have completed their shipments, to correct the DD Form 250 (see F–305) covering the final shipment made from the prime

contractor's plant by addition of a ''Z'' to that shipment number.

(iv) Contractors follow the procedures in F–306 to use commercial invoices.

(3) Block 3—Date Shipped. Enter the date the shipment is released to the carrier or the date the services are completed. If the shipment will be released after the date of CQA and/or acceptance, enter the estimated date of release. When the date is estimated, enter an ''E'' after the date. Do not delay distribution of the MIRR for entry of the actual shipping date. Reissuance of the MIRR is not required to show the actual shipping date.

(4) Block 4—B/L TCN. When applicable, enter—

(i) The commercial or Government bill of lading number after ''B/L;''

(ii) The transportation control number after ''TCN'' (when a TCN is assigned for each line item on the DD Form 250 under Block 16 instructions, insert ''See Block 16''); and

(iii) The initial (line haul) mode of shipment code in the lower right corner of the block (see F–302).

(5) Block 5—Discount Terms. (i) The contractor may enter the discount in terms of percentages on all copies of the MIRR.

(ii) Use the procedures in F–306 when the MIRR is used as an invoice.

(6) Block 6—Invoice No./date. (i) The contractor may enter the invoice number and actual or estimated date of invoice submission on all copies of the MIRR. When the date is estimated, enter an ''E'' after the date. Do not correct MIRRs other than invoice copies to reflect the actual date of invoice submission.

(ii) Use the procedures in F–306 when the MIRR is used as an invoice.

(7) Block 7—Page/of.

Consecutively number the pages of the MIRR. On each page enter the total number of pages of the MIRR.

(8) Block 8—Acceptance point.

Enter an ''S'' for Origin or ''D'' for destination.

(9) Block 9—Prime contractor/code.

Enter the code and address.

(10) Block 10—Administered by/code.

Enter the code and address of the contract administration office (CAO) cited in the contract.

(11) Block 11—Shipped from/code/FOB.

(i) Enter the code and address of the ''Shipped From'' location. If identical to Block 9, enter ''See Block 9.''

(ii) For performance of services line items which do not require delivery of items upon completion of services, enter the code and address of the location at which the services were performed. If the DD Form 250 covers performance at multiple locations, or if identical to Block 9, enter ''See Block 9.''

(iii) Enter on the same line and to the right of ''FOB'' an ''S'' for Origin or ''D'' for Destination as specified in the contract. Enter an alphabetic ''O'' if the ''FOB'' point cited in the contract is other than origin or destination.

(iv) For destination or origin acceptance shipments involving discount terms, enter ''DISCOUNT EXPEDITE'' in at least one-half inch outline-type style letters across Blocks 11 and 12. Do not obliterate other information in these blocks.

(12) Block 12—Payment will be made by/code. Enter the code and address of the payment office cited in the contract.

(13) Block 13—Shipped to/code. Enter the code and address from the contract or shipping instructions.

(14) Block 14—Marked for/code. Enter the code and address from the contract or shipping instructions. When three-character project codes are provided in the contract or shipping instructions, enter the code in the body of the block, prefixed by ''Proj''; do not enter in the code block.

(15) Block 15—Item No. Enter the item number used in the contract.

(i) Use item numbers under the Uniform Contract Line Item Numbering System (see 204.71).

(ii) Position the item numbers as follows—

(A) For item numbers with four or less digits, enter the number immediately to the left of the vertical dashed line and prefix them with zeros, to achieve four digits.

(B) For item numbers with six digits, with alpha digits in the final two positions, enter the last two digits to the right of the vertical dashed line.

(C) For item numbers with six digits, with numbers in the final two positions, enter the first four digits immediately to the left of the vertical dashed line. Do not use the last two digits.

(iii) Line item numbers not in accordance with the Uniform Contract Line Item Numbering System may be entered without regard to positioning.

(16) Block 16—Stock/part No./description. (i) Use single or double spacing between line items when there are less than four line items. Use double spacing when there are four or more line items. Enter the following for each line item:

(A) The national stock number (NSN) or noncatalog number. Where applicable, include a prefix or suffix. If a number is not provided, or it is necessary to supplement the number, include other identification such as the manufacturer's name or federal supply code (as published in Cataloging Handbook H4–1), and the part number. Show additional part numbers in parentheses or slashes. Show the descriptive noun of the item nomenclature and if provided, the Government assigned management/material control code. The contractor may use the following technique in the case of equal kind

supply items. The first entry shall be the description without regard to kind. For example, ''Shoe-Low Quarter-Black,'' ''Resistor,'' ''Vacuum Tube,'' etc. Below this description, enter the contract line item number in Block 15 and Stock/Part number followed by the size or type in Block 16.

(B) On the next printing line, if required by the contract for control purposes, enter: the make, model, serial number, lot, batch, hazard indicator, or similar description.

(C) On the next printing lines enter—

(1) The MIPR number prefixed by ''MIPR'' or the MILSTRIP requisition number(s) when provided in the contract; or

(2) Shipping instructions followed on the same line (when more than one requisition is entered) by the unit for payment and the quantity shipped against each requisition.

Example:

V04696–185–750XY19059A—EA 5
N0018801776038XY3211BA—EA 200
AT650803050051AAT6391J—EA 1000

(D) When a TCN is assigned for each line item, enter on the next line the transportation control number prefixed by ''TCN.''

(ii) For service line items, enter the word ''SERVICE'' followed by as short a description as is possible in no more than 20 additional characters. Some examples of service line items are maintenance, repair, alteration, rehabilitation, engineering, research, development, training, and testing. Do not complete Blocks 4, 13, and 14 when there is no shipment of material.

(iii) For all contracts administered by Defense Contract Management Command, with the exception of fast pay procedures, enter and complete the following:

Gross Shipping Wt. _____
State weight in pounds only.

(iv) Starting with the next line, enter the following as appropriate (entries may be extended through Block 20). When entries apply to more than one line item in the MIRR, enter them only once after the last line item entry. Reference applicable line item numbers.

(A) Enter in capital letters any special handling instructions/limits for material environmental control, such as temperature, humidity, aging, freezing, shock, etc.

(B) When a shipment is chargeable to Navy appropriation 17X4911, enter the appropriation, bureau control number (BCN), and authorization accounting activity (AAA) number (e.g., 17X4911–14003–104).

(C) When the Navy transaction type code (TC), ''2T'' or ''7T'' is included in the appropriation data, enter ''TC 2T'' or ''TC 7T.''

(D) When an NSN is required by but not cited in a contract and has not been furnished by the Government, the contractor may make shipment without the NSN at the direction of the contracting officer. Enter the authority for such shipment.

(E) When Government furnished property (GFP) is included with or incorporated into the line item, enter the letters ''GFP.''

(F) When shipment consists of replacements for supplies previously furnished, enter in capital letters ''REPLACEMENT SHIPMENT.'' (See F–301, Block 17, for replacement indicators).

(G) On shipments of Government furnished aeronautical equipment (GFAE) under Air Force contracts, enter the assignment AERNO control number, e.g., ''AERNO 60–6354.''

(H) For items shipped with missing components, enter and complete the following:

''Item(s) shipped short of the following component(s): NSN or comparable identification _____, Quantity _____, Estimated Value _____, Authority _____''

(I) When shipment is made of components which were short on a prior shipment, enter and complete the following:

''These components were listed as shortages on shipment number _____, date shipped _____''

(J) When shipments involve drums, cylinders, reels, containers, skids, etc., designated as returnable under contract provisions, enter and complete the following:

''Return to _____, Quantity _____, Item _____, Ownership (Government/contractor).''

(K) Enter the total number of shipping containers, the type of containers, and the container number(s) assigned for the shipment.

(L) On foreign military sales (FMS) shipments, enter the special markings, and FMS case identifier from the contract. Also enter the gross weight.

(M) When test/evaluation results are a condition of acceptance and are not available prior to shipment, the following note shall be entered if the shipment is approved by the contracting officer:

''NOTE: Acceptance and payment are contingent upon receipt of approved test/evaluation results.''

The contracting officer will advise—

(1) The consignee of the results (approval/disapproval); and

(2) The contractor to withhold invoicing pending attachment of the approved test/evaluation results.

(N) The copy of the DD Form 250 required to support payment for destination acceptance (top copy of those with shipment) or ARP origin acceptance shall be identified as follows: enter ''PAYMENT COPY'' in approximately one-half inch outline type style letters with ''FORWARD TO BLOCK 12 ADDRESS'' in approximately one-quarter inch

letters immediately below. Do not obliterate any other entries.

(O) For clothing and textile contracts containing a bailment clause, enter the words ''GFP UNIT VALUE.''

(P) When the initial unit incorporating an approved value engineering change proposal (VECP) is shipped, enter the following statement:

This is the initial unit delivered which incorporates VECP No. _____, Contract Modification No. _____, dated

---

(17) Block 17—Quantity shipped/received. (i) Enter the quantity shipped, using the unit of measure in the contract for payment. When a second unit of measure is used for purposes other than payment, enter the appropriate quantity directly below in parentheses.

(ii) On the final shipment of a line item of a contract containing a clause permitting a variation of quantity and an underrun condition exists, the prime contractor shall enter a ''Z'' below the last digit of the quantity. Where the final shipment is from other than the prime contractor's plant and an underrun condition exists, the prime contractor may elect either to—

(A) Direct the subcontractor making the final shipment to enter a ''Z'' below the quantity; or

(B) Upon determination that all subcontractors have completed their shipments, correct the DD Form 250 (see F–305) covering the final shipment of the line item from the prime contractor's plant by addition of a ''Z'' below the quantity. Do not use the ''Z'' on deliveries which equal or exceed the contract line item quantity.

(iii) For replacement shipments, enter ''A'' below the last digit of the quantity, to designate first replacement, ''B'' for second replacement, etc. Do not use the final shipment indicator ''Z'' on underrun deliveries when a final line item shipment is replaced.

17. Quantity
Ship/rec'd
1000
(10)
Z

(iv) If the quantity received is the same quantity shipped and all items are in apparent good condition, enter by a check mark. If different, enter actual quantity received in apparent good condition below quantity shipped and circle. The receiving activity will annotate the DD Form 250 stating the reason for the difference.

(18) Block 18—Unit. Enter the abbreviation of the unit measure as indicated in the contract for payment. Where a second unit of measure is indicated in the contract for purposes other than payment or used for shipping purposes, enter the second unit of measure directly below in parentheses. Authorized abbreviations are listed in MIL–STD–129, Marking for Shipping and Storage. For example, LB for pound, SH for sheet.

18. Unit
LB
(SH)

(19) Block 19—Unit price. The contractor may, at its option, enter unit prices on all MIRR copies, except as a minimum:

(i) The contractor shall enter unit prices on all MIRR copies for each item of property fabricated or acquired for the Government and delivered to a contractor as Government furnished property (GFP). Get the unit price from Section B of the contract. If the unit price is not available, use an estimate. The estimated price should be the contractor's estimate of what the items will cost the Government. When the price is estimated, enter an ''E'' after the unit price.

(ii) Use the procedures in F–306 when the MIRR is used as an invoice.

(iii) For clothing and textile contracts containing a bailment clause, enter the cited Government furnished property unit value opposite ''GFP UNIT VALUE'' entry in Block 16.

(iv) Price all copies of DD Forms 250 for FMS shipments with actual prices, if available. If actual prices are not available, use estimated prices. When the price is estimated, enter an ''E'' after the price.

(20) Block 20—Amount. Enter the extended amount when the unit price is entered in Block 19.

(21) Block 21—Contract quality assurance (CQA). (i) The words ''conform to contract'' contained in the printed statements in Blocks A and B relate to quality and to the quantity of the items on the report. Do not modify the statements. Enter notes taking exception in Block 16 or on attached supporting documents with an appropriate block cross reference.

(ii) When a shipment is authorized under alternative release procedure, attach or include the appropriate contractor signed certificate on the top copy of the DD Form 250 copies distributed to the payment office or attach or include the appropriate contractor certificate on the contract administration office copy when contract administration (Block 10 of the DD Form 250) is performed by the Defense Contract Management Command (DCMC).

(iii) When contract terms provide for use of Certificate of Conformance and shipment is made under these terms, the contractor shall enter ''Certificate of Conformance'' in Block 21A on the next line following the CQA and acceptance statements. Attach or include the appropriate contractor signed certificate on the top copy of the DD Form 250 copies distributed to the payment office or attach

or include the appropriate certificate on the contract administration office copy when contract administration (Block 10 of the DD Form 250) is performed by DCMC. In addition, attach a copy of the signed certificate to, or enter on, copies of the MIRR sent with shipment.

(iv) Origin. (A) The authorized Government representative shall—

(1) Place an ''X'' in the appropriate CQA and/or acceptance box(es) to show origin CQA and/or acceptance. When the contract requires CQA at destination in addition to origin CQA, enter an asterisk at the end of the statement and an explanatory note in Block 16;

(2) Sign and date;

(3) Enter the typed, stamped, or printed name and office DODAAD code.

(B) When alternative release procedures apply—

(1) The contractor or subcontractor shall complete the entries required under paragraph (A) and enter in capital letters ''ALTERNATIVE RELEASE PROCEDURE'' on the next line following the printed CQA/acceptance statement.

(2) When acceptance is at origin and contract administration is performed by an office other than DCMC, the contractor shall furnish the four payment office copies of the MIRR to the authorized Government representative for dating and signing of one copy and forwarding of all copies to the payment office.

(3) When acceptance is at origin and contract administration is performed by DCMC, furnish the contract administration office copy of the MIRR to the authorized Government representative for dating and signing and forwarding to the contract administration office (see F–401, Table 1).

(C) When fast pay procedures apply, the contractor or subcontractor shall enter in capital letters ''FAST PAY'' on the next line following the printed CQA/acceptance statement. When CQA is required, the authorized Government representative shall execute the block as required by paragraph (A).

(D) When Certificate of Conformance procedures apply, inspection or inspection and acceptance are at source, and the contractor's Certificate of Conformance is required, the contractor shall make entries required by paragraph (iv)(A).

(1) For contracts administered by an office other than DCMC, furnish the four payment office copies of the MIRR to the authorized Government representative for dating and signing of one copy, and forwarding of all copies to the payment office.

(2) For contracts administered by DCMC, furnish the contract administration office copy of the MIRR to the authorized Government representative for dating and signing and forwarding to the contract administration office (see F–401, Table 1).

(3) When acceptance is at destination, no entry shall be made other than ''CERTIFICATE OF CONFORMANCE.''

(v) Destination. (A) When acceptance at origin is indicated in Block 21A, no entries shall be made in Block 21B.

(B) When CQA and acceptance or acceptance is at destination, the authorized Government representative shall—

(1) Place an ''X'' in the appropriate box(es);

(2) Sign and date; and

(3) Enter typed, stamped, or printed name and title.

(C) When ''ALTERNATIVE RELEASE PROCEDURE'' is entered in Block 21A and acceptance is at destination, the authorized Government representative shall complete the entries required by paragraph (B).

(D) Forward the executed payment copy or MILSCAP format identifier PKN or PKP to the payment office cited in Block 12 within 4 work days (5 days when MILSCAP Format is used) after delivery and acceptance of the shipment by the receiving activity. Forward one executed copy of the final DD Form 250 to the contract administration office cited in Block 10 for implementing contract closeout procedures, except where a Defense Contract Management Region or the DLA Finance Center is cited as the payment office in Block 12.

(E) When ''FAST PAY'' is entered in Block 21A, make no entries in this block.

(22) Block 22—Receiver's use. The receiving activity (Government or contractor) shall use this block to show receipt, quantity, and condition. The receiving activity shall enter the date the supplies arrived. For example, when off-loading or in-checking occurs subsequent to the day of arrival of the carrier at the installation, the date of the carrier's arrival is the date received for purposes of this block.

(23) Block 23—Contractor use only. Self explanatory.

F–302 Mode/method of shipment codes.

Code	Description
A	Motor, truckload.
B	Motor, less than truckload.
C	Van (unpacked, uncrated personal or Government property).
D	Driveaway, truckaway, towaway.
E	Bus.
F	Air Mobility Command (Channel and Special Assignment Airlift Mission).
G	Surface parcel post.
H	Air parcel post.
I	Government trucks, for shipment outside local delivery area.
J	Air, small package carrier.
K	Rail, carload.[1]
L	Rail, less than carload.[1]
M	Surface, freight forwarder.
N	LOGAIR.
O	Organic military air (including aircraft of foreign governments).

Code	Description
P	Through Government Bill of Lading (TGBL).
Q	Commercial air freight (includes regular and expedited service provided by major airlines; charters and air taxis).
R	European Distribution System or Pacific Distribution System.
S	Scheduled Truck Service (STS) (applies to contract carriage, guaranteed traffic routings and/or scheduled service).
T	Air freight forwarder.
U	QUICKTRANS.
V	SEAVAN.
W	Water, river, lake, coastal (commercial).
X	Bearer, walk-thru (customer pickup of material).
Y	Military Intratheater Airlift Service.
Z	Military Sealift Command (MSC) (controlled contract or arranged space).
2	Government watercraft, barge, lighter.
3	Roll-on Roll-off (RORO) service.
4	Armed Forces Courier Service (ARFCOS).
5	Surface, small package carrier.
6	Military official mail (MOM).
7	Express mail.
8	Pipeline.
9	Local delivery by Government or commercial truck (includes on base transfers; deliveries between air, water, or motor terminals; and adjacent activities). Local delivery areas are identified in commercial carriers' tariffs which are filed and approved by regulatory authorities.

[1] Includes trailer/container-on-flat-car (excluding SEAVAN).

F–303 Consolidated shipments.

When individual shipments are held at the contractor's plant for authorized transportation consolidation to a single bill of lading, the contractor may prepare the DD Forms 250 at the time of CQA or acceptance prior to the time of actual shipment (see Block 3).

F–304 Multiple consignee instructions.

The contractor may prepare one MIRR when the identical line item(s) of a contract are to be shipped to more than one consignee, with the same or varying quantities, and the shipment requires origin acceptance. Prepare the MIRR using the procedures in this appendix with the following changes—

(a) Blocks 2, 4, 13, and, if applicable, 14—Enter ''See Attached Distribution List.''

(b) Block 15—The contractor may group item numbers for identical stock/part number and description.

(c) Block 17—Enter the ''total'' quantity shipped by line item or, if applicable, grouped identical line items.

(d) Use the DD Form 250c to list each individual ''Shipped To'' and ''Marked For'' with—

(1) Code(s) and complete shipping address and a sequential shipment number for each;

(2) Line item number(s);

(3) Quantity;

(4) MIPR number(s), preceded by ''MIPR,'' or the MILSTRIP requisition number, and quantity for each when provided in the contract or shipping instructions; and

(5) If applicable, bill of lading number, TCN, and mode of shipment code.

(e) The contractor may omit those distribution list pages of the DD Form 250c that are not applicable to the consignee. Provide a complete MIRR for all other distribution.

F–305 Correction instructions.

Make a new revised MIRR or correct the original when, because of errors or omissions, it is necessary to correct the MIRR after distribution has been made. Use data identical to that of the original MIRR. Do not correct MIRRs for Blocks 19 and 20 entries. Make the corrections as follows—

(a) Circle the error and place the corrected information in the same block; if space is limited, enter the corrected information in Block 16 referencing the error page and block. Enter omissions in Block 16 referencing omission page and block. For example—

2. SHIPMENT NO.
(AAA0001)
See Block 16

17. QUANTITY
SHIP/REC'D
19
(17)

16. STOCK/PART NO. DESCRIPTION
CORRECTIONS:
Refer Block 2: Change shipment No. AAA001 to AAA0010 on all pages of the MIRR.
Refer Blocks 15, 16, 17, and 18, page 2: Delete in entirety Line Item No. 0006. This item was not shipped.

(b) When corrections have been made to entries for line items (Block 15) or quantity (Block 17) enter the words ''CORRECTIONS HAVE BEEN VERIFIED'' on page 1. The authorized Government representative will date and sign immediately below the statement. This verification statement and signature are not required for other corrections.

(c) Clearly mark the pages of the MIRR requiring correction with the words ''CORRECTED COPY.'' Avoid obliterating any other entries. Where corrections are made only on continuation sheets, also mark page number 1 with the words ''CORRECTED COPY.''

(d) Page 1 and only those continuation pages marked ''CORRECTED COPY'' shall be distributed to the initial distribution. A complete MIRR with corrections shall be distributed to new addressee(s) created by error corrections.

F–306 Invoice instructions.

The Government encourages, but does not require, contractors to use copies of the MIRR as an invoice, in lieu of a commercial

form. If commercial forms are used, identify the related MIRR shipment number(s) on the form. If using the MIRR as an invoice, prepare and forward four copies to the payment office as follows—

(a) Complete Blocks 5, 6, 19, and 20. Block 6 shall contain the invoice number and date. Column 20 shall be totaled.

(b) Mark in letters approximately one inch high, first copy: ''ORIGINAL INVOICE;'' three copies ''INVOICE COPY.''

(c) Forward the four copies to the payment office (Block 12 address), except when acceptance is at destination and a Navy finance office will make payment, forward to destination.

(d) Be sure to separate the four copies of the MIRR used as an invoice from the copies the MIRR used as a receiving report.

F–307 Packing list instructions.

Contractors may use copies of the MIRR as a packing list. The packing list copies are in addition to the copies of the MIRR required for standard distribution (see F–401). Mark them ''PACKING LIST.''

F–308 Receiving instructions.

When the MIRR is used for receiving purposes, local directives shall prescribe procedures. If CQA and acceptance or acceptance of supplies is required upon arrival at destination, see Block 21B for instructions.

PART 4—DISTRIBUTION OF DD FORM 250 AND DD FORM 250C

F–401 Distribution.

(a) The contractor is responsible for distributing the DD Form 250, including mailing and payment of postage.

(b) Contractors shall distribute MIRRs using the instructions in Tables 1 and 2.

(c) Contractors shall distribute MIRRs on non-DoD contracts using this appendix as amended by the contract.

(d) Contractors shall make distribution promptly, but no later than the close of business of the work day following—

(1) Signing of the DD Form 250 (Block 21A) by the authorized Government representative; or

(2) Shipment when authorized under terms of alternative release, certificate of conformance, or fast pay procedures; or

(3) Shipment when CQA and acceptance are to be performed at destination.

(e) Do not send the consignee copies (via mail) on overseas shipments to port of embarkation (POE). Send them to consignee at APO/FPO address.

(f) Copies of the MIRR forwarded to a location for more than one recipient shall clearly identify each recipient.

Material Inspection and Receiving Report

Table 1—Standard Distribution

With Shipment* 2

Consignee (via mail).....1

(For Navy procurement, include unit price)

(For foreign military sales, consignee copies are not required)

Contract Administration Office 1

(Forward direct to address in Block 10 except when addressee is a DCMD, DCMAO, or a DPRO and a certificate of conformance or the alternate release procedures (see F–301, Block 21) is involved, and acceptance is at origin; then, forward through the authorized Government representative.)

Purchasing Office.....1

Payment Office** 2

(Forward direct to address in Block 12 except—

(i) When address in Block 10 is a DCMD or DCMAO and payment office in Block 12 is the Defense Finance and Accounting Service, Columbus Center, do not make distribution to the Block 12 addressee;

(ii) When address in Block 12 is the Defense Finance and Accounting Service, Columbus Center/Albuquerque Office (DFAS–CO/ALQ), Kirtland AFB, NM, attach only one copy to the required number of copies of the contractor's invoice;

(iii) When acceptance is at destination and a Navy finance office will make payment, forward to destination; and

(iv) When a certificate of conformance or the alternative release procedures (see F–301, Block 21) are involved and acceptance is at origin, forward the copies through the authorized Government representative.

ADP Point for CAO (applicable to Air Force only).....1

(When DFAS–CO/ALQ is the payment office in Block 12, send one copy to DFAS–CO/ALQ immediately after signature. If submission of delivery data is made electronically, distribution of this hard copy need not be made to DFAS–CO/ALQ.)

CAO of Contractor Receiving GFP 1

(For items fabricated or acquired for the Government and shipped to a contractor as Government furnished property, send one copy directly to the CAO cognizant of the receiving contractor, ATTN: Property Administrator (see DoD 4105.59–H).)

*Attached as follows:

Type of shipment	Location
Carload or truckload.	Affix to the shipment where it will be readily visible and available upon receipt.
Less than carload or truckload.	Affix to container number one or container bearing lowest number.

Type of shipment	Location
Mail, including parcel post.	Attach to outside or include in the package. Include a copy in each additional package of multi-package shipments.
Pipeline, tank car, or railroad cars for coal movements.	Forward with consignee copies.

** Payment by Defense Finance and Accounting Service, Columbus Center will be based on the source acceptance copies of DD Forms 250 forwarded to the contract administration office.

MATERIAL INSPECTION AND RECEIVING REPORT

TABLE 2—SPECIAL DISTRIBUTION

As required	Address	Number of copies
Each: Navy Status Control Activity, Army, Air Force, DLA Inventory Control Manager.	Address specified in contract	1 Each addressee.
Quality Assurance Representative	Address specified by the assigned quality assurance representative.	1
Transportation Office issuing GBL (attach to GBL memorandum copy).	CAO address unless otherwise specified in the contract.	1
Purchasing Office other than office issuing contract.	Address specified in the contract	1
Foreign Military Sales Representative	Address specified in the contract	8
Military Assistance Advisory Group (Grant Aid shipments).	U.S. Military Advisory Group, Military Attache, Mission, or other designated agency address as specified in the contract.	1
Army:		
Foreign Military Sales	Commander, US Army, Security Asst. Center, ATTN: AMSAC-OL-LS-CS, 3rd Street and ''M'' Avenue, New Cumberland Army Depot, New Cumberland, PA 17070–5096.	
*Director, AMSAC-OE for these country codes	AG, AU, A2, AID, BC, BE, BY, CD, CI, CM, CN, CV, CX, DA, DE, DK, EG, EI, FI, FR, GA, GB, GH, GR, GV, GY, IS, IT, IV, KE, LI, LX, MI, MO, MR, NE, NI, NK, NO, NATO, PT, PU, RM, RW, SK, SL, SO, SP, SU, SW, SZ, SECPO, TK, TO, TU, UG, UK, UV.	
*Director, AMSAC-OX for these country codes	AC, AR, AT, A1, BA, BB, BD, BF, BG, BH, BL, BM, BR, BX, CB, CE, CH, CO, CS, DO, DR, EC, ES, FJ, GJ, GT, GU, HA, HO, ID, IN, IR, JA, JM, JO, KS, KU, LE, MF, MU, MX, NP, NU, NS, NZ, PA, PE, PI, PK, PN, PP, QA, SC, SI, SN, SR, ST, TC, TD, TH, TW, UY, VC, VE, YE.	
Air Force:		
On shipments of new production of aircraft and missiles, class 1410 missiles, 1510 aircraft (fixed wing, all types), 1520 aircraft (rotary wing), 1540 gliders, 1550 target drones.	HQ Air Force Materiel Command AFMC/LGM–AVDO, 4375 Chidlaw Road, Suite 6, Wright-Patterson AFB, OH 45433–5001.	1
Navy:		
Navy Foreign Military Sales	U.S. Navy International Logistics Control Office (NAVILCO), 700 Robbins Avenue, Philadelphia, PA 19111–5095.	2
When typed code (TC) 2T or 7T is shown in Block 16, or when shipment is consigned to another contractor's plant for a Government representative or when Block 16 indicates shipment includes GFP.	Aviation Supply Office (ASO), (Code 0142) for aviation type material, 700 Robbins Avenue, Philadelphia, PA 19111–5098.	2
	and	2
	Ships Parts Control Center (SPCC) (Code 0143) for all other material, 5450 Carlisle Pike, PO Box 2020, Mechanicsburg, PA 17055–0788.	
Marine Corps:		
All shipments consigned to a Marine Corps Activity (excluding aeronautical spares).	Commandant of the Marine Corps, Headquarters, USMC, Washington, DC 20380–0001.	1
	Commanding General, Marine Corps Logistics Base, Albany, GA 31704–5000.	3

TABLE 2—SPECIAL DISTRIBUTION—Continued

As required	Address	Number of copies
Bulk Petroleum Shipments	Cognizant Defense Fuel Region (see Table 4)	1

PART 5—PREPARATION OF THE DD FORM 250–1 (LOADING REPORT)

F–501 Instructions.

Prepare the DD Form 250–1 using the following instructions when applied to a tanker or barge cargo lifting. If space is limited, use abbreviations. The block numbers correspond to those on the form.

(a) Block 1—Tanker/Barge. Line out ''TANKER'' or ''BARGE'' as appropriate and place an ''X'' to indicate loading report.

(b) Block 2—Inspection Office. Enter the name and location of the Government office conducting the inspection.

(c) Block 3—Report No. Number each form consecutively, starting with number 1, to correspond to the number of shipments made against the contract. If shipment is made from more than one location against the same contract, use this numbering system at each location.

(d) Block 4—Agency Placing Order on shipper, city, State and/or local address (loading). Enter the applicable Government activity.

(e) Block 5—Department. Enter military department owning product being shipped.

(f) Block 6—Prime contract or P.O. No. Enter the contract or purchase order number.

(g) Block 7—Name of prime contractor, city, State and/or local address (loading). Enter the name and address of the contractor as shown in the contract.

(h) Block 8—Storage contract. Enter storage contract number if applicable.

(i) Block 9—Terminal or refinery shipped from, city, State and/or local address. Enter the name and location of the contractor facility from which shipment is made. Also enter delivery point in this space as either ''FOB Origin'' or ''FOB Destination.''

(j) Block 10—Order No. on supplier. Enter number of the delivery order, purchase order, subcontract or suborder placed on the supplier.

(k) Block 11—Shipped to: (receiving activity, city, State and/or local address. Enter the name and geographical address of the consignee as shown on the shipping order.

(l) Block 12—B/L Number. If applicable, enter the initials and number of the bill of lading. If a commercial bill of lading is later authorized to be converted to a Government bill of lading, show ''Com. B/L to GB/L.''

(m) Block 13—Reqn. or request No. Enter number and date from the shipping instructions.

(n) Block 14—Cargo No. Enter the cargo number furnished by the ordering office.

(o) Block 15—Vessel. Enter the name of tanker or barge.

(p) Block 16—Draft arrival. Enter the vessel's draft on arrival.

(q) Block 17—Draft sailing. Enter the vessel's draft on completion of loading.

(r) Block 18—Previous two cargoes. Enter the type of product constituting previous two cargoes.

(s) Block 19—Prior inspection. Leave blank.

(t) Block 20—Condition of shore pipeline. Enter condition of line (full or empty) before and after loading.

(u) Block 21—Appropriation (loading). Enter the appropriation number shown on the contract, purchase order or distribution plan. If the shipment is made from departmentally owned stock, show ''Army, Navy, or Air Force (as appropriate) owned stock.''

(v) Block 22—Contract item No. Enter the contract item number applicable to the shipment.

(w) Block 23—Product. Enter the product nomenclature and grade as shown in the contract or specification, the stock or class number, and the NATO symbol.

(x) Block 24—Specifications. Enter the specification and amendment number shown in the contract.

(y) Block 25—Statement of quantity. Enter in the ''LOADED'' column, the net barrels, net gallons, and long tons for the cargo loaded. NOTE: If more than ½ of 1 percent difference exists between the ship and shore quantity figures, the contractor shall immediately investigate to determine the cause of the difference. If necessary, prepare corrected documents; otherwise, put a statement in Block 28 as to the probable or actual cause of the difference.

(z) Block 26—Statement of quality. (1) Under the heading ''TESTS'' list all inspection acceptance tests of the specification and any other quality requirements of the contract.

(2) Under the heading ''SPECIFICATION LIMITS'' list the limits or requirements as stated in the specification or contract directly opposite each entry in the ''TESTS'' column. List waivers to technical requirements.

(3) Under the heading ''TEST RESULTS'' list the test results applicable to the storage tank or tanks from which the cargo was lifted. If more than one storage tank is involved, list the tests applicable to each tank in separate columns headed by the tank

number, the date the product in the tank was approved, and the quantity loaded from the tank. Each column shall also list such product characteristics as amount and type of corrosion inhibitor, etc.

(aa) Block 27—Time statement. Line out ''DISCHARGE'' and ''DISCHARGING.'' Complete all applicable entries of the time statement using local time. Take these dates and times from either the vessel or shore facility log. The Government representative shall ensure that the logs are in agreement on those entries used. If the vessel and shore facility logs are not in agreement, the Government representative will explain the reasons in Block 28—REMARKS. Do not enter the date and time the vessel left berth on documents placed aboard the vessel. The date and time shall appear on all other copies. Express all dates in sequence of day, month, and year with the month spelled out or abbreviated (e.g., 10 Sept. 67). The term FINISHED BALLAST DISCHARGE is meant to include all times needed to complete deballasting and mopping/drying of ship's tanks. The inspection of ship's tanks for loading is normally performed immediately upon completion of drying tanks.

(bb) Block 28—Remarks. Use this space for reporting—(1) All delays, their cause and responsible party (vessel, shore facility, Government representative, or other).

(2) Details of loading abnormalities such as product losses due to overflow, leaks, delivery of product from low level in shore tanks, etc.

(3) In the case of multiple consignees, enter each consignee, the amount consigned to each, and if applicable, the storage contract numbers appearing on the delivery order.

(4) When product title is vested in the U.S. Government, insert in capital letters ''U.S. GOVERNMENT OWNED CARGO.'' If title to the product remains with the contractor and inspection is performed at source with acceptance at destination, insert in capital letters ''CONTRACTOR OWNED CARGO.''

(5) Seal numbers and location of seals. If space is not adequate, place this information on the ullage report or an attached supplemental sheet.

(cc) Block 29—Company or receiving terminal. Line out ''OR RECEIVING TERMINAL'' and get the signature of the supplier's representative.

(dd) Block 30—Certification by government representative. Line out ''DISCHARGED.'' The Government representative shall date and sign the form to certify inspection and acceptance, as applicable, by the Government. The name of the individual signing this certification, as well as the names applied in Blocks 29 and 31, shall be typed or hand lettered. The signature in Block 30 must agree with the typed or lettered name to be acceptable to the paying office.

(ee) Block 31—Certification by master or agent. Obtain the signature of the master of the vessel or its agent.

PART 6—PREPARATION OF THE DD FORM 250–1 (DISCHARGE REPORT)

F–601 Instructions.

Prepare the DD Form 250–1 using the following instructions when applied to a tanker or barge discharge. If space is limited, use abbreviations. The block numbers correspond to those on the form.

(a) Block 1—Tanker/barge. Line out ''TANKER'' or ''BARGE'' as applicable and place an ''X'' to enter discharge report.

(b) Block 2—Inspection office. Enter Government activity performing inspection on the cargo received.

(c) Block 3—Report No. Leave blank.

(d) Block 4—Agency placing order on shipper, city, state and/or local address (loading). Enter Government agency shown on loading report.

(e) Block 5—Department. Enter Department owning product being received.

(f) Block 6—Prime contract or P.O. No. Enter the contract or purchase order number shown on the loading report.

(g) Block 7—Name of prime contractor, city, state and/or local address (loading). Enter the name and location of contractor who loaded the cargo.

(h) Block 8—Storage contract. Enter the number of the contract under which material is placed in commercial storage where applicable.

(i) Block 9—Terminal or refinery shipped from, city, state and/or local address. Enter source of cargo.

(j) Block 10—Order no. on supplier. Make same entry appearing on loading report.

(k) Block 11—Shipped to: (receiving activity, city, state and/or local address). Enter receiving activity's name and location.

(l) Block 12—B/L Number. Enter as appears on loading report.

(m) Block 13—Reqn. or Request No. Leave blank.

(n) Block 14—Cargo No. Enter cargo number shown on loading report.

(o) Block 15—Vessel. Enter name of tanker or barge discharging cargo.

(p) Block 16—Draft arrival. Enter draft of vessel upon arrival at dock.

(q) Block 17—Draft sailing. Enter draft of vessel after discharging.

(r) Block 18—Previous two cargoes. Leave blank.

(s) Block 19—Prior inspection. Enter the name and location of the Government office which inspected the cargo loading.

(t) Block 20—Condition of shore pipeline. Enter condition of line (full or empty) before and after discharging.

(u) Block 21—Appropriation (loading). Leave blank.

(v) Block 22—Contract item no. Enter the item number shown on the loading report.

(w) Block 23—Product. Enter information appearing in Block 23 of the loading report.

(x) Block 24—Specifications. Enter information appearing in Block 24 of the loading report.

(y) Block 25—Statement of quantity. Enter applicable data in proper columns.

(1) Take ''LOADED'' figures from the loading report.

(2) Determine quantities discharged from shore tank gauges at destination.

(3) If a grade of product is discharged at more than one point, calculate the loss or gain for that product by the final discharge point. Report amounts previously discharged on discharge reports prepared by the previous discharge points. Transmit volume figures by routine message to the final discharge point in advance of mailed documents to expedite the loss or gain calculation and provide proration data when more than one department is involved.

(4) The loss or gain percentage shall be entered in the ''PERCENT'' column followed by ''LOSS'' or ''GAIN,'' as applicable.

(5) On destination acceptance shipments, accomplish the ''DISCHARGED'' column only, unless instructed to the contrary.

(z) Block 26—Statement of quality. (1) Under the heading ''TESTS'' enter the verification tests performed on the cargo preparatory to discharge.

(2) Under ''SPECIFICATION LIMITS'' enter the limits, including authorized departures (if any) appearing on the loading report, for the tests performed.

(3) Enter the results of tests performed under the heading ''TEST RESULTS.''

(aa) Block 27—Time statement. Line out ''LOAD'' and ''LOADING.'' Complete all applicable entries of the time statement using local time. Take the dates and times from either the vessel or shore facility log. The Government representative shall ensure that these logs are in agreement with entries used. If the vessel and shore facility logs are not in agreement, the Government representative will explain the reason(s) in Block 28—REMARKS. Do not enter the date and time the vessel left berth on documents placed aboard the vessel. The date and time shall appear on all other copies. Express all dates in sequence of day, month, and year with the month spelled out or abbreviated (e.g., 10 Sept. 67).

(bb) Block 28—Remarks. Use this space for reporting important facts such as—

(1) Delays, their cause, and responsible party (vessel, shore facility, Government representative, or others).

(2) Abnormal individual losses contributing to the total loss. Enter the cause of such losses as well as actual or estimated volumes involved. Such losses shall include, but not be restricted to, product remaining aboard (enter tanks in which contained), spillages, line breaks, etc. Note where gravity group change of receiving tank contents results in a fictitious loss or gain. Note irregularities observed on comparing vessel ullages obtained at loading point with those at the discharge point if they indicate an abnormal transportation loss or contamination.

(cc) Block 29—Company or receiving terminal. Line out ''COMPANY OR.'' Secure the signature of a representative of the receiving terminal.

(dd) Block 30—Certification by government representative. Line out ''LOADED.'' The Government representative shall date and sign the form to certify inspection and acceptance, as applicable, by the Government. The name of the individual signing the certification as well as the names applied in Blocks 29 and 31, shall be typed or hand lettered on the master or all copies of the form. The signature in Block 30 must agree with the typed or lettered name to be acceptable to the paying office.

(ee) Block 31—Certification by master or agent. Obtain the signature of the master of the vessel or the vessel's agent.

PART 7—DISTRIBUTION OF THE DD FORM 250–1

F–701 Distribution.

(a) The Government representative shall distribute the completed DD Form 250–1 using Table 3 of this appendix as amended by the provisions of the contract or shipping order.

(b) The contractor shall furnish the Government representative sufficient copies of the completed form to permit the required distribution.

(c) Distribution of the form shall be made as soon as possible, but not later than 24 hours following completion of the form. (See Table 3 on following pages)

F–702 Corrected DD Form 250–1.

When errors are made in entries on the form which would affect payment or accountability, make corrected copies. Circle the corrected entries on all copies and mark the form ''CORRECTED COPY.'' Enter the statement, ''Corrections Have Been Verified,'' in Block 26 with the authorized Government representative's dated signature directly below. Make distribution of the certified corrected copy to all recipients of the original distribution.

Type of Shipment	Recipient of DD form 250–1	No. of copies			
		Loading (prepared by shipper or government representative)		Discharge (prepared by receiving activity)	
		Tanker	Barge	Tanker	Barge
All	Each Consignee (By mail CONUS only)	2	1	As Required	As Required
(On all overseas shipments provide for a minimum of 4 consignees. Place 1 copy, attached to ullage report, in each of 4 envelopes. Mark the envelopes, ''Consignee—First Destination,'' Consignee—Second Destination,'' etc. Deliver via the vessel.)	With Shipment	1	1	As Required	As Required
	Master of Vessel	1	1	1	1
	Tanker or Barge Agent	2	2	2	2
	Contractor	As Required	As Required	As Required	As Required
	Cognizant Inspection Office	1	1	1	1
	Government Representative responsible for quality at each destination.	1	1	1	1
	Government Representative at Cargo Loading Point.	1.	1.	*1.	*1
On all USNS tankers and all MSC chartered tankers and MSC chartered barges.	Military Sealift Command, Code N322, Washington, DC 20398–5100.	2	2	2	2
See the contract or shipping order for finance documentation and any supplemental requirements for Government-owned product shipments and receipts.	Payment Office: if this is DASC–F send copies to: Defense Fuels Supply Center, ATTN: DFSC–RDX, Cameron Station, Bldg. 5, Alexandria, Va 22304–6160 (do not send copies to DASC–F).	2	2	2	2
For shipments and receipts of DFSC financed cargos for which DASC–F is not the paying office.	Defense Fuels Supply Center, Attn: DFSC–RF, Cameron Station, Alexandria, VA 22304–6160.	1	1	1	1
For shipments on all USNS tankers, MSC chartered tankers and barges, and FOB destination tankers with copy of ullage report.	Defense Fuels Supply Center, ATTN: DFSC–01, Cameron Station, Alexandria, VA 22304–6160.	1	1	**1	1
On Army ILP shipments	U.S. Army International Logistics Center, New Cumberland Army Depot, New Cumberland, PA 17070–5001.	2	2	2	2
Navy—On all shipments to Navy Operated Terminals.	Navy Fuels Petroleum Office, Cameron Station, Alexandria, Va 22304–6180.	2	1	2	1
On all shipments to AF Bases	Directorate of Energy management, SA ALC(SFT), Kelly AFB, TX 78241–5000.	1	1	1	1
On all Conus loadings	DFSC Fuels Region(s) cognizant of shiping point	1	1	1	1
On all shipments to CONUS Destinations	DFSC Fuel Region(s) cognizant of shipping and receiving point****.	1	1	0	0
For all discharges of cargos originating at DFSPs and discharging at activities not a Defense Fuel Support Point.	Defense Fuels Supply Center, ATTN: DFSC–RF, Cameron Station, Alexandria, VA 22304–6160.			***1	***1

*With copy of ullage report.
**Dry tank certificate to accompany DD Form 250–1 and ullage report.
***Copies of the DD Form 250–1, forwarded by bases, will include the following in block 11: Shipped to: Supplementary Address, if applicable; Signal Code; and Fund Code.
****See Table 4.

TABLE 4—FUEL REGION LOCATIONS AND AREAS OF RESPONSIBILITY

a. DFR Northeast	Defense Fuel Region Northeast, Building 2404, McGuire AFB, NJ 08641–5000.
Area of Responsibility.	Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia.
b. DFR Central	Defense Fuel Region Central, 8900 S. Broadway, Building 2, St. Louis, MO 63125–1513.
Area of Responsibility.	Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin, and Wyoming.
c. DFR South	Defense Fuel Region South, Federal Office Building, 2320 La Branch, Room 1213, Houston, TX 77004–1091.
Area of Responsibility.	Alabama, Arizona, Arkansas, Caribbean Area, Florida, Georgia, Louisiana, Mexico, Mississippi, New Mexico, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, Texas, West Indies, Central America, and South America.
d. DFR West	Defense Fuel Region West, 3171 N. Gaffney Street, San Pedro, CA 90731–1099.
Area of Responsibility.	California, Idaho, Montana, Nevada, Oregon, Utah, and Washington.
e. DFR Alaska	Defense Fuel Region Alaska, Elmendorf AFB, Alaska 99506–5000.
Area of Responsibility.	Alaska and Aleutians.
f. DFR Europe	Defense Fuel Region Europe, Building 2304, APO New York 09128–4105.
Area of Responsibility.	Continental Europe, United Kingdom, Mediterranean Area, Turkey, and Africa (less Djibouti, Egypt, Ethiopia, Kenya, Somalia).
g. DFR Mideast	Defense Fuels Region, Middle East, P.O. Box 386, Awali, Bahrain, APO New York 09526–2830.
Area of Responsibility.	Afghanistan, Bahrain, Djibouti, Egypt, Ethiopia, Iran, Iraq, Jordan, Kenya, Kuwait, Oman, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, United Arab Emirates, and Yemen.
h. DFR Pacific	Defense Fuel Region, Pacific, Camp H. M. Smith, Honolulu, HI 96861–5000.
Area of Responsibility.	Australia, Burma, East Indies, Hawaii, Indian Ocean, Japan, Korea, Malaya, Marianas, New Zealand, Philippines, Ryukyu Islands, South Pacific Islands, Sri Lanka, Taiwan, and Thailand.

[56 FR 36610, July 31, 1991, as amended at 57 FR 53602, Nov. 12, 1992; 58 FR 37868, July 14, 1993; 59 FR 27678, May 27, 1994; 60 FR 61615, Nov. 30, 1995]

APPENDIX G TO CHAPTER II—ACTIVITY ADDRESS NUMBERS

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AUTHORITY; 41 U.S.C. 421 and 48 CFR chapter 1.

PART 1—GENERAL

G–100 Scope.

This appendix identifies the activity address numbers to be used with the uniform procurement instrument identification numbering system prescribed in DFARS subpart 204.70.

G–101 Assignment and use of a number.

(a) Activities coding solicitations, contracts and related instruments shall use only those codes assigned by their respective department/agency activity address monitor(s).

(b) The six-character code is used in the first six positions of the procurement instrument identification number (PIIN). When required, activities also will be assigned a two position code. The two position code is used in the first two positions of the call/order serial number.

(c) Activity address monitors are—

ARMY

Department of the Army, Attn: OSA(RDA)-PA, 5109 Leesburg Pike, Suite 916, Falls Church, VA 22041–3201

NAVY*

Navy Accounting and Finance Center (NAFC–5511), Washington, DC 20376–5001

MARINE CORPS*

Headquarters, U.S. Marine Corps (Code LBP), Washington, DC 20380–0001

AIR FORCE

SAF/AQCO, 1060 Air Force Pentagon, Washington, DC 20330–1060

DEFENSE LOGISTICS AGENCY

Defense Logistics Agency, Acquisition Operations Team, 8725 John J. Kingman Road Suit 2533, Fort Belvoir, VA 22060–6221

OTHER DEFENSE AGENCIES

All other Defense agencies will forward requests for Appendix G maintenance to the Department of the Army, OSA(RDA)-PA.

*The Navy and Marine Corps Activity Address Monitor for assignment of two-character call/order serial numbers is: Office of the Assistant Secretary of the Navy (RD&A), Room 536, Crystal Plaza 5, Washington, DC 20350–1000.

G–102 Activity address number data base maintenance.

(a) The Defense Logistics Agency, DLA–PS, Cameron Station, Alexandria, VA 22304–6100 is the executive agent for maintenance of six and two character code assignments. The executive agency distributes blocks of two character codes to department/agency activity address monitors for further assignment.

(b) Contracting activities submit requests for assignment of or changes in either the six character or two character codes to their activity address monitor in accordance with department/agency procedures. Activity address monitors—

(1) Approve request for additions, deletions, or changes;

(2) Notify the executive editor, Defense Acquisition Regulations System, OUSD(A&T)DP(DAR), 3062 Defense Pentagon, Washington, DC 20301–3062; and

(3) Provide a copy of the notification to the executive agent.

(c) A copy of the appendix G data base is available on tape or MS–DOS compatible floppy diskettes from the executive agent.

PART 2—ARMY ACTIVITY ADDRESS NUMBERS

DAAA03, B1 Pine Bluff Arsenal, Attn: SMCPB–PO, 10020 Kabrich Circle, Pine Bluff, AR 71602–9500

DAAA08, B7 Rock Island Arsenal, Attn: SMCRI–CT, Rock Island, IL 61299–5000

DAAA09, BA U.S. Army Armament, Munitions, and Chemical Command, Attn: AMSIO–ACS, Rock Island, IL 61299–6000

DAAA22, BV Watervliet Arsenal, Attn: SIOWV–PPA, Watervliet, NY 12189–4050

DAAA31, GJ McAlester Army Ammunition Plant, Attn: SMCMC–PC, McAlester, OK 74501–5000

DAAA32, 0P Crane Army Ammunition Activity, Attn: SMCCN–CT, 300 Highway 361, Crane, IN 47522–5099

DAAB07, BG USA Communications-Electronics Command, C3I Acquisition Center, Attn: AMSEL–ACSP–BM, Fort Monmouth, NJ 07703–5008

DAAB08, 2V USA Communications-Electronics Command, C3I Acquisition Center, Attn: AMSEL–ACSB–C (Facility ADP Branch), Fort Monmouth, NJ 07703–5008

DAAB10, ZP USA CECOM C3I Acquisition Center, Attn: AMSEL–ACVF–A–AA (Stop 42), Building 160, Warrenton, VA 22186–5172

DAAB11, D0 USA CECOM C3I Acquisition Center, Attn: AMSEL–AC–VHA–HB Base OPS (Stop 42), Warrenton, VA 22186–5172

DAAB22, E7 Headquarters, 5th Signal Command, DCSLOG, Contract Management Division, Attn: ASQE–LG–C, CMR 421, APO AE 09056–3104

DAAB23, E8 1st Signal Brigade, Unit #15271, Attn: ASQK–L–CO, APO AP 96205–0044

DAAB24, Joint Visual Information Activity, Attn: SAM–OPV–V, 601 North Fairfax Street, Rm 334, Alexandria, VA 22314–2007

DAAC01, BH Anniston Army Depot, Attn: SDSAN–DOC, Anniston, AL 36201–5003

DAAC02, 9X Lexington Blue Grass Army Depot, Procurement Office, Attn: SIO–BG–PO, 2091 Kingston Highway, Richmond, KY 40475–5115

DAAC07, ZM Sierra Army Depot, Attn: SDSSI–CONT, Herlong, CA 96113–5009,

DAAC67, ZN Letterkenny Army Depot, Attn: SDSLE–P, Chambersburg, PA 17201–4152

DAAC71, ZS Tobyhanna Army Depot, Attn: SKSTO–K, Tobyhanna, PA 18466–5100

DAAC79, D7 Red River Army Depot, Attn: SDSRR–P, Texarkana, TX 75507–5000

DAAC83, BJ Corpus Christi Army Depot, Attn: SDSCC–C, Corpus Christi, TX 78419–6170

DAAC89, BK Tooele Army Depot, Attn: SDSTE–DCBO, Tooele, UT 84074–0839

DAAD01, B5 USA Yuma Proving Ground, Directorate of Contracting, Attn: ATEYP–CR, Yuma, AZ 85365–9106

DAAD05, BM USA Aberdeen Proving Ground, Support Activity, Attn: STEAP–PR/M, Ryan Building, Aberdeen Proving Ground, MD 21005–5001

DAAD07, BN USA White Sands Missile Range, Directorate of Contracting, Attn: STEWS–PR, White Sands, NM 88002–5201

DAAD09, BP USA Dugway Proving Ground, Directorate of Contracting, Attn: STEDP–DOC, Dugway, UT 84022–0538

DAAE07, BR USA Tank-Automotive Command, Attn: AMSTRA–IDAS, Warren, MI 48397–5000

DAAE20, DG Armament and Chemical Acquisition and Logistics Activity (ACALA),

Attn: Acquisition Center, Rock Island, IL 61299–6000

DAAE30, 2T U.S. Army Armament RD&E Center (ARDEC), Attn: SMCAR–PCM–O, Building 9, Picatinny Arsenal, NJ 07806–5000

DAAG55, YU U.S. Army Research Office (ARO), Attn: AMXRO–PR, P.O. Box 12211, Research Triangle Park, NC 27709–2211

DAAG99, ZY USA Program Manager-SANG, Attn: AMCPM–NGA, Unit 61304, APO AE 09803–1304

DAAH01, CC USA Missile Command, Attn: AMSMI–AC, Redstone Arsenal, AL 35898–5280

DAAH03, D8 USA Missile Command, Attn: AMSMI–AC, Redstone Arsenal, AL 35898–5280

DAAJ02, D9 Aviation Applied Technology Directorate, U.S. Army Aviation and Troop Command, Attn: AMSAT–R–TC, Building 401, Fort Eustis, VA 23604–5577

DAAJ04, 0V USA Charles Melvin Price Support Center, Attn: SATAS–P, Granite City, IL 62040–1801

DAAJ05, ZF USA Aviation and Troop Command, Attn: IAS21WG, Building 404, Fort Eustis, VA 23604–5577

DAAJ09, BS USA Aviation and Troop Command, Attn: AMSAT–A–AD, 4300 Goodfellow Boulevard, St. Louis, MO 63120–1798

DAAK01, BB USA Aviation and Troop Command, Attn: AMSAT–A–AD, 4300 Goodfellow Boulevard, St. Louis, MO 63120–1798

DAAK60, C5 Soldier Systems Command Acquisition Center, Attn: SATNC–PP (Procurement Support Division), Natick, MA 01760–5011

DAAL01, 1Y U.S. Army Research Laboratory, Attn: AMSRL–OP–PR, 2800 Powder Mill Road, Adelphi, MD 20783–1145

DAAM01, ZU U.S. Army Chemical and Biological Defense Command, Attn: AMSCB–PC, Building E4455, Aberdeen Proving Ground, MD 21010–5423

DAAM02, B2 Rocky Mountain Arsenal, Attn: AMXRM–PM, Building 111, Commerce City, CO 80022–1748

DABT01, F6 U.S. Army Aviation Center, Contracting Office, Attn: ATZQ–C, Building T–00116, Fort Rucker, AL 36362–5000

DABT02, 2A U.S. Army Chemical and Military Police Centers and Fort McClellan, Attn: ATZN–DOC, Building 241–C, Transportation Road, Fort McClellan, AL 36205–5000

DABT10, 2B U.S. Army Infantry Center and Fort Benning, Attn: ATZB–KT, Building 6, Meloy Hall, Room 207, Fort Benning, GA 31905–5000

DABT11, 2C U.S. Army Signal Center and Fort Gordon, Attn: ATZH–CT, Building 2102, Fort Gordon, GA 30905–5110

DABT19, 2D U.S. Army Combined Arms Center and Fort Leavenworth, Attn: ATZL–GCC, 600 Thomas Avenue, Fort Leavenworth, KS 66027–1389

DABT23, 2E U.S. Army Armor Center and Fort Knox, Attn: ATZK–DC, Building 4022, Fort Knox, KY 40121–5000

DABT31, 2F U.S. Army Engineer Center and Fort Leonard Wood, Attn: ATZT–DOC, Building 606, P.O. Box 140, Fort Leonard Wood, MO 65473–0140

DABT39, 2H U.S. Army Field Artillery Center and fort Sill, Attn: ATZR–Q, Building 1803, P.O. Box 3501, Fort Sill, OK 73503–0501

DABT43, 2J Carlisle Barracks, Attn: ATZE–DOC–C, 314 Lovell Avenue, Suite 1, Carlisle Barracks, PA 17013–5072

DABT47, 2K U.S. Army Training Center and Fort Jackson, Attn: ATZK–DOC, Building 4340, Magruder Street, Fort Jackson, SC 29207–5491

DABT51, 2L U.S. Army Air Defense Artillery Center and Fort Bliss, Attn: ATZC–DOC, Building 2021, 1733 Pleasonton Road, Fort Bliss, TX 79916–6816

DABT57, 2N Directorate of Peninsula Contracting, Attn: ATZF–DPC, Building 2746, Harrison Loop, Fort Eustis, VA 23604–5293

DABT58, 2P Fort Monroe, Attn: ATZG–C #62, Building T–195, Fort Monroe, VA 23651–6000

DABT59, 2Q U.S. Army Combined Arms Support Command and Fort Lee, Attn: ATZM–DOC, 1830 Quartermaster Road, Fort Lee, VA 23801–1606

DABT60, 1L TRADOC Contracting Agency, Attn: ATCA, Building 2798, Fort Eustis, VA 23604–5538

DABT61, BF The Judge Advocate General's School, USA, University of Virginia, Attn: JAGS–SSL–B, 600 Massie Road, Charlottesville, VA 22903–1781

DABT63, BL U.S. Army Intelligence Center, Attn: ATZS–DK, P.O. Box 12748, Fort Huachuca, AZ 85670–2748

DABT65, B0 Mission Contracting Activity at Fort Leavenworth, Attn: ATOB–AL, Room 303, 600 Thomas Avenue, Fort Leavenworth, KS 6602–1389

DABT67, 0Q Commander DLIFLC & POM, Attn: ATZP–DOC, Building 276, Plummer Street, Presidio of Monterey, CA 93944–5006

DACA01, DACW01, CK USA Engineer District, Mobile, Attn: CESAM–CT, P.O. Box 2288, Mobile, AL 36628–0001

DACA03, DACW03, CL USA Engineer District, Little Rock, Attn: DESWL–CT, P.O. Box 867, Little Rock, AR 72203–0867

DACA05, DACW05, CM USA Engineer District, Sacramento, Attn: DESPK–CT, 1325 J Street, Sacramento, CA 95814–2922

DACA07, DACW07, CP USA Engineer District, San Francisco, Attn: CESPN–CT, 333 Market Street, San Francisco, CA 94105–2197

DACA09, DACW09, CQ USA Engineer District, Los Angeles, Attn: CESPL–CT, P.O. Box 2711, Los Angeles, CA 90053–2325

DACA17, DACW17, CS USA Engineer District, Jacksonville, Attn: CESAJ–CT, P.O. Box 4970, Jacksonville, FL 32232–0019

DACA21, DACW21, CV USA Engineer District, Savannah, Attn: CESAS–CT, P.O. Box 889, Savannah, GA 31402–0889

DACA23, DACW23, CX USA Engineer District, Chicago, Attn: CENCR–CT, 111 North Canal Street, Chicago, IL 60606–7206

DACA25, DACW25, CD USA Engineer District, Rock Island, Clock Tower Building, Attn: CENCR–CT, P.O. Box 2004, Rock Island, IL 61202–2004

DACA27, DACW27, CY USA Engineer District, Louisville, Attn: CEORL–CT, P.O. Box 59, Louisville, KY 40201–0059

DACA29, DACW29, CZ USA Engineer District, New Orleans, Attn: CELMN–CT, P.O. Box 60267, New Orleans, LA 70160–0267

DACA31, DACW31, DA USA Engineer District, Baltimore, Contracting Division, Attn: CENAB–CT, P.O. Box 1715, Baltimore, MD 21203–1715

DACA33, DACW33, DB USA Engineer District, New England, Attn: CENED–CT, 424 Trapelo Road, Waltham, MA 02254–9149

DACA35, DACW35, DC USA Engineer District, Detroit, Attn: CENCE–CT, P.O. Box 1027, Detroit, MI 48231–1027

DACA37, DACW37, DD USA Engineer District, St, Paul, Attn: CENCS–CT, 190 Fifth Street East, St. Paul, MN 55101–1638

DACA38, DACW38, DE USA Engineer District, Vicksburg, Attn: CELMK–CT, 3515 I–20 Frontage Road, Vicksburg, MS 39180–5191

DACA39, DACW39, DF USA Engineer, Waterways Experiment Station, Attn: CEWES–CT–Z (Contracting Division), 3909 Halls Ferry Road, Vicksburg, MS 39180–6199

DACA41, DACW41, DH USA Engineer District, Kansas City, Attn: CEMRK–CT, 601 East 12th Street, Kansas City, MO 64106–2896

DACA43, DACW43, DJ USA Engineer District, St. Louis, Attn: CELMS–CT, 1222 Spruce Street, St. Louis, MO 63103–2833

DACA45, DACW45, DK USA Engineer District, Omaha, Attn: CEMRO–CT, 215, North 17th Street, Omaha, NE 68102–4978

DACA47, DACW47, DM USA Engineer District, Albuquerque, Attn: CESWA–CT, P.O. Box 1580, Albuquerque, NM 87103–1580

DACA49, DACW49, DN USA Engineer District, Buffalo, Attn: CENCB–CT, (Contracting Division), 1776 Niagara Street, Buffalo, NY 14207–3199

DACA51, DACW51, CE USA Engineer District, New York, Contracting Division, Attn: CENAN–CT, 26 Federal Plaza, New York, NY 10028–0090

DACA54, DACW54, DQ USA Engineer District, Wilmington, Attn: CESAW–CT, P.O. Box 1890, Wilmington, NC 28402–1890

DACA56, DACW56, DS USA Engineer District, Tulsa, Attn: CESWT–CT, P.O. Box 61, Tulsa, OK 74121–0061

DACA57, DACW57, DT USA Engineer District, Portland, Attn: CENPP–CT, P.O. Box 2946, Portland, OR 97208–2946

DACA59, DACW59, DV USA Engineer District, Pittsburgh, Attn: CEORP–CT–SADBUS, 1000 Liberty Avenue, Pittsburgh, PA 15222–4186

DACA60, DACW60, DW USA Engineer District, Charleston, Attn: CESAC–CT, P.O. Box 919, Charleston, SC 29402–0919

DACA61, DACW61, CF USA Engineer District, Philadelphia, Attn: CENAP–CT, Contracting Division, 110 Penn Square East, Wanamaker Building, Philadelphia, PA 19107–3390

DACA62, DACW62, DX USA Engineer District, Nashville, Attn: CEORN–CT, P.O. Box 1070, Nashville, TN 37202–1070

DACA63, DACW63, DY USA Engineer Distrct, Fort Worth, Attn: CESWF–CT, P.O. Box 17300, Fort Worth, TX 76102–0300, Fort Worth, TX 76102–0300

DACA64, DACW64, DZ USA Engineer District, Galveston, Attn: CESWG–CT, P.O. Box 1229, Galveston, TX 77553

DACA65, DACW65, EA USA Engineer District, Norfolk, Contracting Division, Attn: CENAO–CT, 803 Front Street, Norfolk, VA 23510–1096

DACA66, DACW66, EB USA Engineer District, Memphis, Attn: CEIMM–CT, B–202 Clifford Davis Federal Building, Memphis, TN 38103–1894

DACA67, DACW67, EC USA Engineer District, Seattle, Attn: CENPS–CT, P.O. Box C–3755, Seattle, WA 98124–2255

DACA68, DACW68, YW USA Engineer District, Walla Walla, Attn: CENPW–CT, Building 602, City-County Airport, Walla Walla, WA 99362–9265

DACA69, DACW69, CB USA Engineer District, Huntington, Attn: CEORH–CT, 502 8th Street, Huntington, WV 25701–2070

DACA72, DACW72, ZA USA Humphreys Engineer Center, Support Activity, Attn: CEHEC–CT, Kingman Building, Fort Belvoir, VA 22060–5580

DACA75, DACW75, ZC USA Engineer Ordnance Program Division, Attn: CETAD–OP–C, APO AE 09803–1303

DACA76, DACW76, ZD USA Topographic Engineering Center, Attn: CETEC–CT, 7701 Telegraph Road, Alexandria, VA 22315–3864

DACA78, DACW78, 9V USA Engineer Transatlantic Division, Attn: CETAD–CT–P, 201 Prince Frederick Drive, Winchester, VA 22602

DACA79, DACW79, 2R USA Engineer District Japan, Attn: CEPOJ–CT, Unit 45010, APO AP 96343–0061

DACA81, DACW81 USA Engineer District, Far East, APO AP 96205–0610

DACA83, DACW83, ZH USA Engineer Division—Pacific Ocean, Attn: CEPOD–CT, Building 230, Fort Shafter, HI 96858–5540

DACA85, DACW85, ZJ USA Engineer District, Alaska, P.O. Box 898, Anchorage, AK 99506–0898

DACA87, DACW87, ZW USA Engineer Division, Huntsville, Attn: CEHND–CT, P.O. Box 1600, Huntsville, AL 35807–4301

DACA88, DACW88, 0S USA Construction Engineering Research Laboratory, Attn: CECER–CT, P.O. Box 4005, Champaign, IL 61820–1305

DACA89, DACW89, 1Z USA Cold Regions Research and Engineering Laboratory, Attn: CECRL–LM–CT, 72 Lyme Road, Hanover, NH 03755–1290

DACA90, DACW90 Trans Atlantic Program Center—Europe, Attn: CETAE–CT, CMR 410, Box 7, APO AE 09096

DADA03, 8W Fitzsimons Army Medical Center, Directorate of Contracting, Attn: HSHG–DC, Building 205, 10th Street and McCloskey Avenue, Aurora, CO 80045–5001

DADA08, BT Dwight David Eisenhower Medical Center, Contracting Office, Attn: HSAA–D, Building 39706, 40 A Street, Fort Gordon, GA 30905–5650

DADA09, YY William Beaumont Army Medical Center, Attn: HSAA–W, Building 7777, Piedras Street, Room 4J18, El Paso, TX 79920–5001

DADA10, ZQ U.S. Army Medical Command, Central Contracting Office, Attn: HSAA–C, Building 2015, 1105 Beebe Loop, Fort Sam Houston, TX 78234–6000

DADA13, 0W Madigan Army Medical Center, Contracting Office, Attn: HSAA–M, Building 9933–A, Johnson Street, Tacoma, WA 98431–5100

DADA15, 0X Walter Reed Army Medical Center, Directorate of Contracting, Attn: HSHL–ZC, Building T–20, 1st Floor, Washington, DC 20307–5001

DADA16, 0Y Tripler Army Medical Center, Contracting Office, Attn: HSAA–T, Building 160, Krukowski Street, Tripler AMC, HI 96859–5000

DADA18, 1R Directorate of Contracting, Attn: AFZG–DOC, Building 4201, Fort Sam Houston, TX 78234–5000

DADA19 EURO–RMC (Regional Medical Command), Landstuhl, Germany, AP AE 09180–3460

DADW30, 0F US Army Military District of Washington, Attn: ANPC, 103 3rd Avenue, Fort Lesley J. McNair, Washington, DC 20319–5050

DADW35, 2M USA Garrison Fort Belvoir, Directorate of Contracting, Attn: ANFB–OC, 9410 Jackson Loop, Suite 101, Fort Belvoir, VA 22060–5134

DADW36, 1J Fort Meade Directorate of Contracting, Attn: ANME–OC, Building 2234, Fort George G. Meade, MD 20755–5081

DADW38, 2S Fort Ritchie Directorate of Contracting, 601 Lakeside Drive, Fort Ritchie, MD 21719–4020

DADW49, 0M National Defense University, Contracting Office, Attn: NDU–LG–P, Building 62, Fort Lesley J. McNair, Washington, DC 20319–5066

DAHA01, 9B USPFO for Alabama, P.O. Box 3715, Montgomery, AL 36193–4801

DAHA02, 0G USPFO for Arizona, 5644 East Moreland Street, Phoenix, AZ 85008–3442

DAHA03, 9D USPFO for Arkansas, Camp Robinson, North Little Rock, AR 72118–2200

DAHA04, 9N USPFO for California, P.O. Box 8104, San Luis Obispo, CA 93403–8104

DAHA05, Z0 USPFO for Colorado, 660 South Aspen Street, Bldg 1005, Mail Stop 53, Aurora, CO 80011–9511

DAHA06, 1S USPFO for Connecticut, State Armory, Attn: Contracting Officer, 360 Broad Street, Hartford, CT 06105–3795

DAHA07, 9A USPFO for Delaware, Grier Building, 1161 River Road, New Castle, DE 19720–5199

DAHA08, 2W USPFO for Florida, P.O. Box 1008, St. Augustine, FL 32085–1008

DAHA09, C0 USPFO for Georgia, P.O. Box 17882, Atlanta, GA 30316–0882

DAHA10, CU USPFO for Idaho, 4040 W. Guard Street, Boise, ID 83705–5004

DAHA11, 9E USPFO for Illinois, 1301 North McArthur Boulevard, Springfield, IL 62702–2399

DAHA12, 4E USPFO for Indiana, 2002 S. Holt Road, Indianapolis, IN 46241–4839

DAHA13, 9L USPFO for Iowa, Camp Dodge, 7700 NW Beaver Drive, Johnston, IA 50131–1902

DAHA14, 4Z USPFO for Kansas, 2737 South Kansas Avenue, Topeka, KS 66611–1170

DAHA15, 6P USPFO for Kentucky, Boone National Guard Center, Frankfort, KY 40601–6192

DAHA16, 0A USPFO for Louisiana, Jackson Barracks, New Orleans, LA 70146–0330

DAHA17, 0B USPFO for Maine, Camp Keys, Augusta, ME 04333–0032

DAHA18, 0C USPFO for Maryland, State Mil Reservation, 301 Old Bay Lane, Havre de Grace, MD 21078–4094

DAHA19, 0D USPFO for Massachusetts, Attn: Contracting Officer, 143 Speen Street, Natick, MA 01760–2599

DAHA20, 9F USPFO for Michigan, 3111 West St. Joseph Street, Lansing, MI 48913–5102

DAHA21, 9K USPFO for Minnesota, Camp Ripley, P.O. Box 288, Little Falls, MN 56345–0288

DAHA22, CW USPFO for Mississippi, 144 Military Drive, Jackson, MS 39208–8880

DAHA23, 9H USPFO for Missouri, 1715 Industrial Avenue, Jefferson City, MO 65101–1468

DAHA24, 9P USPFO for Montana, P.O. Box 1157, Helena, MT 59624–1157

DAHA25 USPFO for Nebraska, 1234 Military Road, Lincoln, NE 68508–1092

DAHA26 USPFO for Nevada, 2601 South Carson Street, Carson City, NV 89701–5596

DAHA27 USPFO for New Hampshire, P.O. Box 2003, Concord, NH 03301–2003

DAHA28, ZK USPFO for New Jersey, 131 Eggert Crossing Road, Lawrenceville, NJ 08648–2805

DAHA29 USPFO for New Mexico, Attn: Contracting Officer, P.O. Box 4277, Santa Fe, NM 87502–4277

DAHA30, D2 USPFO for New York, 330 Old Niskayuna Road, Latham, NY 12110–2224

DAHA31, D3 USPFO for North Carolina, 4201 Reedy Creek Road, Raleigh, NC 27607–6412

DAHA32, D6 USPFO for North Dakota, P.O. Box 5511, Bismarck, ND 58502–5511

DAHA33, 9M USPFO for Ohio, 2811 West Granville Road, Columbus, OH 43235–2712

DAHA34, 9J USPFO for Oklahoma, 3501 Military Circle, N.E., Oklahoma City, OK 73111–4398

DAHA35, 1X USPFO for Oregon, Attn: USPFO–P, P.O. Box 14840, Salem, OR 97309–5008

DAHA36, DL USPFO for Pennsylvania, Department of Military Affairs, ATT: Contracting Officer, Annville, PA 17003–5003

DAHA37 USPFO for Rhode Island, 330 Camp Street, Providence, RI 02906–1954

DAHA38, DU USPFO for South Carolina, 9 National Guard Road, Columbia, SC 29201–4766

DAHA39, VQ USPFO for South Dakota, Camp Rapid, Rapid City, SD 57702–8186

DAHA40, YX USPFO for Tennessee, Powell Avenue, P.O. Box 40748, Nashville, TN 37204–0748

DAHA41, 9C USPFO for Texas, Attn: Contracting Officer, P.O. Box 5218, Austin, TX 78563–5218

DAHA42 USPFO for Utah, P.O. Box 2000, Draper, UT 84020–2000

DAHA43 USPFO for Vermont, Camp Johnson, Building #3, P.O. Box 2000, Colchester, VT 05446–3004

DAHA44, ZR USPFO for Virginia, 501 East Franklin Street, Richmond, VA 23219–2317

DAHA45, ZX USPFO for Washington, Camp Murray, Tacoma, WA 98430–5000

DAHA46 USPFO for West Virginia, 50 Armory Road, Buckhannon, WV 26201–2396

DAHA47, 9G USPFO for Wisconsin, 8 Madison Blvd., Camp Douglas, WI 54618–5002

DAHA48 USPFO for Wyoming, P.O. Box 1709, Cheyenne, WY 82003–1709

DAHA49 USPFO for the District of Columbia, Anacostia Naval Air Station, Building 350, Washington, DC 203315–0001

DAHA50 USPFO for Hawaii, 4208 Diamond Head Road, Honolulu, HI 96816–4495

DAHA51, 2Z USPFO for Alaska, Attn: P&C Division, Camp Denali, P.O. Box B, Fort Richardson, AK 99505–2600

DAHA70 USPFO for Puerto Rico, P.O. Box 3786, San Juan, PR 00904–3786

DAHA72 USPFO for Virgin Islands, #9 Estate Diamond, Frederiksted, St. Croix, VI 00840

DAHA74 USPFO for Guam, 622 E. Harmon Industrial Park Road, Tamuning, GU 96911–4422

DAHA90, 2Y National Guard Bureau, Contracting Support, 5109 Leesburg Pike, Suite 401–B, Falls Church, VA 22041–3201

DAHC76, 8U U.S. Army Garrison, Alaska, Directorate of Contracting, Attn: APVR–DOC, P.O. Box 5–525, Fort Richardson, AK 99505–0525

DAHC77, CJ U.S. Army Garrison, Hawaii, Directorate of Contracting, Attn: APVG–GK, Building 520, Pierce Street, Fort Shafter, HI 96858–5025

DAJA01, 9Q RCO Vicenza, Attn: AEUCC–I, Unit 31401, Box 33, APO AE 09630

DAJA02, G5 RCO Seckenheim, Attn: AEUCC–S, Unit 29331, APO AE 09266

DAJA16, 8X RCO Grafenwoehr, Attn: AEUCC–G, Unit 28130, APO AE 09114

DAJA22, G6 Wiesbaden Regional Contracting Center, Attn: AEUCC–C, CMR 410, Box 741, APO AE 09096

DAJA61, 9Z RCO Benelux, Attn: AEUCC–B, PSC 79, Box 003, APO AE 09724

DAJA77 HQ, USACCE (Contracting Cell, Deployed), Attn: AEUCC–O, Unit 29331, APO AE 09266

DAJA89, F0 RCO Wuerzburg, Attn: AEUCC–W, Unit 26622, APO AE 09244

DAJA90, 0T RCO Bad Kreuznach, Attn: AEUCC–BK, Unit 24307, APO AE 09252

DAJB03, F4 HQ, EUSA, Asst Cofs Acquisition Mgt, Attn: EAAQ (PARC), Unit 15236, APO AP 96205–0009

DAJN21, 1V U.S. Army Garrison, Panama, Directorate of Contracting, Attn: SOCO–CO, Unit 7116, APO AA 34002–5000

DAKF04, ZE Directorate of Contracting, Attn: AFZJ–DC, P.O. Box 10039, Fort Irwin, CA 92310–0039

DAKF06, 1C Directorate of Contracting, Attn: AFZC–DOC, Building 6222, Fort Carson, CO 80913–5022

DAKF10, 1D Directorate of Contracting, Attn: AFZP–DC, Building 622, 2nd Floor, Fort Stewart, GA 31314–5189

DAKF11, 1E Army Atlanta Contracting Center, Attn: AFLG–PRC, Building 130, Anderson Way, Fort McPherson, GA 30330–6000

DAKF19, 1G Directorate of Contracting, Attn: AFZN–DOC, P.O. Box 2248, Fort Riley, KS 66442–0248

DAKF23, 1H Directorate of Contracting, Attn: AFZB–DOC, Building 2174, 13½ and Indiana Streets, Fort Campbell, KY 42223–1100

DAKF24, G1 Directorate of Contracting, Attn: AFZX–DOC, P.O. Drawer 3918, Fort Polk, LA 71459–5000

DAKF29, 2G Directorate of Contracting, Attn: AFZT–DOC, Building 5418, 3rd Floor, South Scott Plaza, Fort Dix, NJ 08640–6150

DAKF31, 1K Directorate of Contracting, Attn: AFRC–FMD–DOC, Building 227, Fort Devens, MA 01433–5340

DAKF36, 1M Directorate of Contracting, Attn: AFZS–DOC, 45 West Street, Fort Drum, NY 13602–5220

DAKF40, 1N Directorate of Contracting, Attn: AFZA–DC, Drawer 70120, Fort Bragg, NC 28307–0120

DAKF48, 1Q Headquarters, III Corps and Fort Hood, Directorate of Contracting, Attn: AFZF–DOC, Building 1001 (Room W103), Fort Hood, TX 76544– 5059

DAFK57, 1T Directorate of Contracting, Attn: AFZH–DOC, Building 9504, Box 339500, Fort Lewis, WA 98433–9500

DAKF61, 1U Directorate of Contracting, Attn: AFRC–FM–DC, Building 2103, 8th Avenue, Fort McCoy, WI 54656–5000

DAKF63, 9R Directorate of Contracting, Los Alamitos, 1120 Lexington Drive, Los Alamitos, CA 90720–5002

DAMA01, G8 Superintendent, USA Military Academy, Attn: MADC, Building 667A, West Point, NY 10996–1594

DAMD17, B3 U.S. Army Medical Research Acquisition Activity, Attn: MCMR–AAA, Fort Detrick, Frederick, MD 21702–5014

DAMT01, 0E HQ MTMC, Acquisition Division, Attn: MTAQ–A, 5611 Columbia Pike, Falls Church, VA 22041–5050

DAMT02, G3 MTMC Eastern Area, Contracting Division, Attn: MTELO–C, Building 42/7, Bayonne, NJ 07002–5302

DAMT03, G4 MTMC, Western Area, Commander, Attn: MTWLO–CO, Building 1, Alaska Street, Room 2336, Oakland, CA 94626–5000

DASA01, G0 USA Central Command-Saudi Arabia, Dhahran, Saudi Arabia, Attn: ARCENT–SA–CN, APO AE 09808

DASA02 USA Central Command-Kuwait, Camp Doha, Kuwait, Attn: ARCENT–KU–KO, APO AE 09889–9900

DASA03 ARCENT Contracting Division, Attn: ARFD–PARC, Building 363, Fort McPherson, GA 30330–7000

DASA04 USA Central Command-Qatar, Doha, Qatar, Attn: ARCENT–QA–DOC, APO AE 09898

DASC01, YJ USAINSCOM Support Battalion (Prov), Directorate of Contracting Operations, Attn: IASB–DCO, 8825 Beulah Street, Fort Belvoir, VA 22060–5246

DASC02, 1B National Ground Intelligence Center (NGIC), Attn: IANG–LOG, 220 Seventh Street NE, Charlottesville, VA 22902–5396

DASG60, CB USA Space and Strategic Defense Command, Deputy Commander, Attn: CSSD–CM–AC, P.O. Box 1500, Huntsville, AL 35807–3801

DASG62, CH U.S. Army Space Command, Attn: MOSC–SC, 1670 North Newport Road, Suite 211, Colorado Springs, CO 80916–2749

DASW01, F7 Defense Supply Service—Washington, Attn: Policy and Compliance, 5200 Army Pentagon, Room 1E260, Washington, DC 20310–5200

DATM01, 0R U.S. Army OPTEC Contracting Activity, Attn: CSTE–ZOC, P.O. Box Y, Fort Hood, TX 76544–5065

PART 3—NAVY ACTIVITY ADDRESS NUMBERS

*An asterisk indicates a two-digit code of a major command, which is shared with subordinate activities. Such subordinate activities will indicate the Unit Identification Code of the major command in parentheses, e.g. (MAJ00011).

N00011—LB*, LBZ
Chief of Naval Operations, Washington, DC 20350–2000

N00012—HX*, V8*, V8Y
Assistant for Administration, Under Secretary of the Navy, Washington, DC 20350

N00013—MR
Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332

N00014—EE*, EE0–9
Office of Naval Research, Arlington, VA 22217

N00015—L0*, L0Z
Naval Intelligence Command HQ, (Suitland, MD), 4600 Silver Hill Road, Washington, DC 20389

N00018—MC*, MD*, J5*, QA*, MCZ
Bureau of Medicine and Surgery, Washington, DC 20372–5120

N00019—EF*, GU*, EF0–9
Naval Air Systems Command, 1421 Jefferson Davis Highway, Arlington, VA 22243–5120

N00022—ML*, MQ*, NV*, MLZ
Chief of Naval Personnel, Washington, DC 20370–2000

N00023—4J*, L5*, 4J0–9
Naval Supply Systems Command, 1931 Jefferson Davis Highway, Arlington, VA 22241–5360

N00024—EH*, U0*, EH0–9
Naval Sea Systems Command, 2531 Jefferson Davis Highway, Arlington, VA 22242–5160

N00025—EJ*, FZ*, EJ0–9
Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332

N00030—EK*, EK0–9
Strategic Systems Programs, 1931 Jefferson Davis Highway, Arlington, VA 22241–5362

N00033—EL*, EL0–9
Commander, Military Sealift Command, Washington, DC 20390

N00038 (MAJ00011)—LB–5
U.S. Commander-in-Chief, Pacific, HQ Support Division, Box 64017, Code J145, Camp H.N. Smith, HI 96861–4017

N00039—NS*, NS0–9
Space and Naval Warfare Systems Command, 2451 Crystal Drive, Arlington, VA 22245–5200

N00060—LH*, J0*, NM*, LHZ
Commander-in-Chief, Atlantic Fleet, Norfolk, VA 23511

N00061—NL*, NLZ

Commander-in-Chief, U.S. Naval Forces, Europe, (London, U.K.), FPO AE 09499
N00062—8A*, L9*, R0*, 8A0–9
Chief of Naval Education and Training, Code 013, NAS, Pensacola, FL 32508–5100
N00063—NT*, NTZ
Naval Computer and Telecommunications Command, 4401 Massachusetts Avenue NW., Washington, DC 20394–5290
N00065—S0*, S0Z
Naval Oceanography Command, Stennis Space Center, Bay St. Louis, MS 39529–5000
N00069—8Q*, 8QZ
Naval Security Group HQ, 3801 Nebraska Avenue NW., Washington, DC 20390–0008
N00070—LP*, V5*, 4L*, LPZ
Commander in Chief, Pacific Fleet, NAVBASE, Pearl Harbor, HI 96860–7000
N00072—9T*, LC*, 9TZ
Commander, Naval Reserve Force, Code 17, New Orleans, LA 70146
N00074—QH*, QHZ
Naval Special Warfare Command, NAVPHIBASE Coronado, San Diego, CA 92155
N00101—3R
Naval Air Station, South Weymouth, MA 02190
N00102—EN
Portsmouth Naval Shipyard, Portsmouth, NH 03801
N00104—EP, EQ
Naval Inventory Control Point, 5450 Carlisle Pike, Box 2020, Mechanicsburg, PA 17055–0788
N00105—JT
Naval Medical Clinic, NAVSHIPYD, Portsmouth, NH 03801
N00109—F1
Naval Weapons Station, Yorktown, VA 23491
N00123—ES
Commanding Officer, Naval Regional Contracting Center, 937 N. Harbor Drive, San Diego, CA 92132–5106
N00124—M5
Naval War College, Newport, RI 02840
N00127—H1
Naval Air Station, Quonset Point, RI 02819
N00128—EU
Supply Department, Naval Administrative Command, Naval Training Station, Great Lakes, IL 60088
N00129—EV
Submarine Base, New London, Groton, CT 06340
N00140—EX, LA
Commanding Officer, Naval Regional Contracting Center, Naval Base Bldg. No. 600, Philadelphia, PA 19112
N00146—QK
Marine Corps Air Station, Cherry Point, NC 28533
N00151—EY
Philadelphia Naval Shipyard, Philadelphia, PA 19112
N00153—N0
Governor, Naval Home, 01800 East Beach Blvd., Gulfport, MS 39501
N00158—3V
Naval Air Station, Willow Grove, PA 19090
N00161—FA
Naval Academy, Annapolis, MD 21402
N00162 (MAJ00018)—MDG–H
Naval Medical Clinic, Annapolis, MD 21402–5050
N00163—FB
Naval Air Warfare Center, Aircraft Division Indianapolis, 21st and Arlington Avenue, Indianapolis, IN 46218
N00164—FC
Naval Surface Warfare Center, Crane Division, Crane, IN 47522
N00166 (MAJ00072)—LC0–1
Naval Air Facility, Bldg 3086, Andrews AFB, Washington, DC 20396–5130
N00167—FD
Naval Surface Warfare Center, Carderock Division, Bethesda, MD 20084–5000
N00168—FE
National Naval Medical Center, National Capital Region, Bethesda, MD 20014
N0017A
Atlantic Fleet Weapons Training, Facility (Code 51) (Roosevelt Roads, PR), Naval Station, Box 3023, FPO AA 34051
N00171—N5
HQ, Naval District Washington, Washington Navy Yard, Washington, DC 20374
N00173—FF
Naval Research Laboratory, Washington, DC 20390
N00174—FG
Naval Surface Warfare Center, Indian Head Division, Indian Head, MD 20640
N00178
Naval Surface Warfare Center, Dahlgren Division, Dahlgren, VA 22448
N00181—FJ
Norfolk Naval Shipyard, Portsmouth, VA 23709
N00183—JX
Commanding Officer, Naval Hospital, Portsmouth, VA 23708–5100
N00187—3J
Navy Public Works Center, Norfolk, VA 23511
N00188—H2
Naval Air Station, Norfolk, VA 23511
N00189—FK, H3
Naval Supply Center, Norfolk, VA 23512
N00191—FL
Charleston Naval Shipyard, Naval Base, Charleston, SC 29408
N00193 (MAJ00024)—EHD–G
Commanding Officer (Code 11), Naval Weapons Station, Charleston, SC 29408–7000
N00196—3K

Commanding Officer (Code 60), Naval Air Station, Atlanta, Marietta, GA 30060
N00197—FM
Naval Surface Warfare Center, Naval Ordnance Station, Crane Division, Louisville, KY 40214
N00203 (MAJ00018)—MCL
Commanding Officer, Naval Hospital, Pensacola, FL 32512
N00204—FN
Naval Air Station (Code 19P10), Pensacola, FL 32508
N00205—FP
Naval Support Activity (Code N443), New Orleans, LA 70146
N00206
Naval Air Station, New Orleans, LA 70146
N00207—FQ
Naval Air Station, Jacksonville, FL 32212
N00211 (MAJ00018)—MCQ–S
Naval Hospital, Great Lakes, IL 60088–5230
N00213—H4
Naval Air Station, Key West, FL 33040
N00215—3W
Naval Air Station (Code 60), Dallas, TX 75211
N00216—FR
Commanding Officer (Code 194), Naval Air Station, Bldg 10, Corpus Christi, TX 78419
N00221—K5
Mare Island Naval Shipyard, Vallejo, CA 94592
N00228—FU
Naval Supply Center, Oakland, CA 94625
N00231
Commanding Officer, Naval Medical Clinic, Quantico, VA 22134
N00232 (MAJ00018)—MCB–F
Naval Hospital, Jacksonville, FL 32214–5222
N00236—NX
Naval Air Station, Alameda, CA 94501
N00244—NW
Naval Supply Center, Naval Base, 937 North Harbor Drive, San Diego, CA 92132
N00245 (MAJ00070)—LPN
Naval Station, San Diego, CA 92136–5000
N00246—H5
Naval Air Station, North Island, San Diego, CA 92135
N00247—HC
Naval Training Center, San Diego, CA 92133
N00249
Commanding Officer, Civil Engineer Support Office, Naval Construction Battalion Center, Port Hueneme, CA 93043
N00250—FW
Commander, Navy Exchange Service Command, NAVSTA New York, Staten Island, NY 10305
N00251—FX
Puget Sound Naval Shipyard, Bremerton, WA 98314
N00253—FY
Commanding Officer, Naval Undersea Warfare Center, Division Keyport, Keyport, WA 98345
N00255 (MAJ00070), LPS–T—LPW–Y
Naval Station Puget Sound, Seattle, WA 98115–5000
N00267 (MAJ00018)—MC0–1
Commanding Officer, Navy Medical Clinic, Key West, FL 33040
N00274 (MAJ00072)—LCA–B
Naval Air Facility, Detroit, Selfridge Air Force Base, Supply Department, Mt. Clemens, MI 48045
N00275—3M
Naval Air Station, Glenview, IL 60026
N00276
Naval Air Station, Twin Cities, Minneapolis, MN 55450
N00281 (MAJ00062)—L90–1
Commanding Officer, Fleet Combat Training Center, Atlantic, Dam Neck, Virginia Beach, VA 23461
N00285 (MAJ00018)—MDR
Commanding Officer, Naval Hospital, Corpus Christi, TX 78419
N00288
Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120
N00296—NY
Naval Air Station, Moffett Field, CA 94035
N00311—GA
Pearl Harbor Naval Shipyard, Box 400 Pearl Harbor, HI 96860
N0031A (MAJ00060), J0K–M—JOY–Z
Commander, Naval Special Warfare Group Two, Naval Amphibious Base, Little Creek, Norfolk, VA 23521–5340
N00314—M7
Submarine Base, Pearl Harbor, HI 96860
N00334—N6
Naval Air Station, Barbers Point, HI 96862
N00383, GB, GC
Naval Inventory Control Point, 700 Robbins Avenue, Philadelphia, PA 19111–5098
N00389, KL—MM
Contracting Officer (Code 192), U.S. Naval Station (Roosevelt Roads, PR), Box 3002, FPO AA 34051
00391, EP, EQ, GB, GC
Naval Inventory Control Point, 700 Robbins Avenue, Philadelphia, PA 19111–5098
N00406—GE
Naval Supply Center, Puget Sound, Bremerton, WA 98314
N00421—M8
Naval Air Warfare Center, Aircraft Division, Patuxent River, MD 20670
N00600—GG
Naval Regional Contracting Center, Washington Navy Yard, Washington, DC 20374
N00604—NQ
Naval Supply Center, Pearl Harbor, Pearl Harbor, HI 96860
N00612—GH
Commanding Officer, Naval Supply Center, RCD, Code 200M, Charleston, SC 29408
N00619 (MAJ00018)—QA0–9
Naval Hospital Oakland, CA 94627–5000
N00620—H6

Naval Air Station, Whidbey Island, Oak Harbor, WA 98277
N00639—H7
Commanding Officer, Naval Air Station, Memphis (84), Millington, TN 38054
N00702 (MAJ00069)—8QM–N
Naval Security Group Activity, Winter Harbor, ME 04693
N00743—8N
Commanding Officer, Naval Computer and Telecommunications Station (Roosevelt Roads, PR), Box 3022, FPO AA 34051
N00788 (MAJ00063)—NTR–S
Commanding Officer, Naval Communications Det., Washington, (Cheltenham, MD), Washington, DC 20390
N00849 (MAJ00069)—8QC
Naval Security Group Activity, Skaggs Island, Sonoma, CA 95476–5000
N00886—QB
Naval Communications Station, San Francisco, Rough and Ready Island, Stockton, CA 95203
N00950—8R
Naval Computer and Telecommunications Area, Master Station, EASTPAC, Wahiawa, HI 96786
N0417A (MAJ00025)—EJA
Naval Support Facility, P.O. Box 1000, Thurmont, MD 21788
N0428A—3Q
Naval Air Station, Patuxent River, MD 20670
N0429A—3A
Naval Air Warfare Center, Weapons Division, Point Mugu, CA 93042
N0434A (N00022)—MQL
United States Navy Band, Washington Navy Yard, Washington, DC 20374–1052
N0463A (MAJ00024)—EHC
Commanding Officer, Navy Experimental Diving Unit, NAVCOASTSYSCEN, Bldg. 321, Panama City, FL 32401
V04697 (MAJ00060)—LHA
USS Simon Lake, FPO AA 34085–2590
N0597A (MAJ00012)—HXP–W
Director, Office of Civilian Personnel Management, Southeast Region, Bldg A–67, Naval Base, Norfolk, VA 23511–6098
N0598A (MAJ00012)—HXN
Director, Office of Civilian Personnel Management, Pacific Division, Box 119, Pearl Harbor, HI 96860–5060
N0604A (MAJ00012)—HXJ–L
Director, Office of Civilian Personnel Management, Northwest Region, 2890 North Main Street, Suite 301, Walnut Creek, CA 94596–2739
N0605A (MAJ00012)—HXG–H
Director, Office of Civilian Personnel Management, Northeast Region, Bldg 75–3 Naval Base, Philadelphia, PA 19112–5006
N0610A (MAJ00062)—L98
Commanding Officer, Naval Diving and Salvage Training Center, 350 South Crag Road, Panama City, FL 32407–7016
N0618A (MAJ00062)—8AE
School of Music, Naval Amphibious Base, Little Creek, Norfolk, VA 23521–5240
N0619A—8E
Naval Health Sciences Education & Training Command, NAVMEDCOM NATCAPREG, Bethesda, MD 20814
N0708A (MAJ00024)—U0A–B
Naval Warfare Engineering Activity, Port Hueneme Division, Naval Surface Warfare Center, Yorktown, VA 23961–5076
N08939
Navy Section, US Military Group (Caracas, Venezuela), Department of State, Washington, DC 20521
N09534
Navy Section, US Military Group (Lima, Peru), APO AA 34031
N09550—4G
Commander Fleet Air Mediterranean (Naples, Italy), FPO AE 09619
N30492 (MAJ00039)—NSC
David W. Taylor Naval Ship Research and Development Center Detachment Puget Sound, Bremerton, WA 98324–5215
N30776—4N
Naval Air Station, Kingsville Auxiliary Landing Field Detachment, Orange Grove, TX 77630
N30779—3Z
Naval Auxiliary Landing Field, Goliad, TX 77963
N30829 (MAJ00061)—NL0–2
Officer in Charge, Naval Support Activity, Naples Detachment (Gaeta, Italy), FPO AE 09609
N30929
Commanding Officer, Navy Flight Demonstration Squadron (Blue Angels), Naval Air Station, (Attn: Supply Officer), Pensacola, FL 32508
N31149 (MAJ00024)—EHA–B
Naval Sea Logistics Center Detachment, Philadelphia Naval Base, Philadelphia, PA 19112–5061
N31699 (MAJ00012)—V8Z
Office of Under Secretary of the Navy, Washington, DC 20350–1000
N31863
Director, Naval Audit Service, Capital Region, P.O. Box 1206, Falls Church, VA 22041
N31954 (MAJ00062)—R0X
Submarine Training Facility, San Diego, CA 92106
N32525—8S
U.S. Naval Communication Station, Naples Detachment (Sigonella, Italy), FPO AE 09627
N32778 (MAJ00070)—4LE
Fleet Activities, Chinhae (Korea), FPO AP 96269–1100
N32832—7K
Naval Aviation Logistics Center, European Repair and Rework, Activity Representative (Alverca, Portugal), APO AE 09642
N32960—K2

Navy Support Office, La Maddalena (Sardinia Italy), FPO AE 09612
N33137 (MAJ00015)—L0A–C
Naval Intelligence Operations Group DET CTG 168.4 (Munich, Germany), APO AE 09108
N35316 (MAJ00060)—J0G
Patrol Combatant Missile Squadron Two, Mobile Logistic Support Group, Trumbo Point Annex, NAS Key West, FL 33040
N35949 (MAJ00018)—J5S
Naval Hospital, Twentynine Palms, CA 92278–5008
N39088 (MAJ00022)—NVF
Navy Recruiting Orientation Unit, 206 South Avenue, Suite C, Pensacola, FL 32508–5102
N39167
Commanding Officer, Naval Branch Medical Clinic, Naval Air Station, Meridian, MS 39309
N39353—GV
Commanding Officer, Integrated Combat Systems Test Facility, San Diego, CA 92152
N41756—LE
Navy Engineering Logistics Office, Washington, DC 20000
N42237—7A
Commanding Officer, Naval Submarine Base, Code N411, Kings Bay, GA 31547
N43646 (MAJ00023)—4JB
Defense Printing Service, Detachment Branch Office, 5403 Southside Drive, Louisville, KY 40214
N44405 (MAJ00062)—8AA
Antilles Consolidated School System, Box 3200 (Roosevelt Roads, PR), FPO AA 34051
N44416 (MAJ00023)—4JL
Defense Printing Service Northeast Area, 700 Robbins Avenue, Philadelphia, PA 19111–5093
N44930—KN
Intra-Fleet Supply Support Operations Program, Norfolk, VA 23512
N44967—KP
Naval Sea Systems Command Detachment (PERA CSS), San Francisco, CA 94124–2995
N45045 (MAJ00012)—V8A
Navy Comptroller Standard Systems Activity Det., Raleigh Oaks Plaza Office Building, 3606 Austin Peay Highway, Memphis, TN 38128–3757
N45405—HS
Naval Sea Systems Command Det., PERA (Surface) Atlantic Office, Portsmouth, VA 23709–5000
N45406—LD
Officer in Charge, Naval Sea Systems Command Detachment (PERA CV), Puget Sound Naval Shipyard, Bremerton, WA 98310–0206
N45411 (MAJ00070)—LPE
Assault Craft #5, MCB Camp Pendleton, CA 92055–5003
N45534 (MAJ00024)—EHN
AEGIS Combat Systems Center, Bldg D–11, Wallops Island, VA 23337
N45854 (MAJ00011)—LBE
Fleet Surveillance Support Command, Chesapeake, Chesapeake, VA 23322–5010
N46079
Military Sealift Command Office, Northern Europe, (Bremerhaven, Germany), APO AE 09069–0006
N46450 (MAJ00023)—L50–9
Naval Supply Center, Charleston Detachment, Naval Submarine Base, Kings Bay, GA 31547
N46531 (MAJ00012)—HX0–E
Office of Civilian Personnel Management, National Capital Region, 801 N. Randolph Street, Arlington, VA 22203
N46656—NP
Telecommunication Management Detachment West, 937 North Harbor Drive, San Diego, CA 92132–5104
N46657 (MAJ00063)—NT0–NT1
Telecommunication Management Detachment Pacific, Wahiawa, HI 96786–3050
N46659—KJ
Telecommunications Management Detachment Europe, (Naples, Italy), FPO AE 09620
N46904 (MAJ00060)—J00–1
Commanding Officer, Precommissioned Unit, Antisubmarine Warfare Training Group Atlantic, Bldg CEP 104, Naval Station, Norfolk, VA 23511–6495
N47408 (MAJ00025)—EJP–W
Naval Facilities Engineering Command Contracts Office, Naval Construction Battalion Center, Port Hueneme, CA 93043–5000
N47427 (MAJ00070)—V5G
Naval Air Pacific Repair Activity Detachment, New Zealand (Christchurch), c/o U.S. Naval Support Force Antarctic Det., FPO AP 96531
N47875 (MAJ00019)—GUP–S
Naval Technical Representative Detachment Bethpage, Grumman Aerospace Corporation, Bethpage, NY 11714–3593
N47876 (MAJ00019)—GUJ–L
Naval Technical Representative Detachment Burbank, Lockheed Aeronautical Systems Company, P.O. Box 551, Burbank, CA 91503
N47877—GD
Naval Technical Representative Detachment St. Louis, McDonnell Douglas Corporation, P.O. Box 516, St. Louis, MO 63166–0516
N47878 (MAJ00019)—GUV
Naval Technical Representative Detachment Lynn, General Electric Company, Aircraft Engine Business Group, 1000 Western Avenue, Lynn, MA 01910–0445
N47879 (MAJ00019)—GUO–B
Naval Technical Representative Detachment Stratford, United Technologies

Corporation, Sikorsky Aircraft Divison, Stratford, CT 06497
N48142 (MAJ00012)—V80–1
Assistant Secretary of the Navy, Research Development and Acquisition, Washington, DC 20350–1000
N48398 (MAJ00070)—4LD
Commander, U.S. Naval Forces Alaska, P.O. Box 25517, Juneau, AK 99802–5517
N48521 (MAJ00019)—GUX
Naval Technical Representative Detachment Bell, Bell Helicopter Textron, P.O. Box 482, Bldg. 2, Fort Worth, TX 76101
N48758 (MAJ00070)—V5R
Naval Air Pacific Repair Activity Plant Rep. Office, Box 39, (Atsugi, Japan), FPO AP 96306
N48984 (MAJ00023)—L5E
Defense Printing Service, Detachment Office, 901 South Drive, Scott Air Force Base, IL 62225–5106
N49399 (MAJ00060)—NM0–9
Naval Submarine Support Facility, Supply Operations, New London, Box 500, Groton, CT 06349–5500
N52731 (MAJ00072)—LCU
Reserve Naval Construction Force, First Reserve Naval Construction Brigade Support Detachment, Naval Construction Battalion Center, Bldg 121, Gulfport, MS 39501–5016
N52846 (MAJ00019)—EFA–B
Naval Aviation Depot Operations Center Detachment, European Repair and Rework Activity (NERRA), (Naples, Italy), Box 50, FPO AE 09619
N52855—LZ
Special Boat Unit 11, FPO AP 96601–4517
N53210 (MAJ00060)—LHJ–K
Assault Craft Unit 2, Naval Amphibious Base, Little Creek, Norfolk, VA 23520
N53825—GY
Naval Surface Force, US LANTFLT, Norfolk, VA 23511–6002
N53863 (MAJ00060)—LHH
Commander, Surface Warfare Development Group, 2200 Amphibious Drive, Norfolk, VA 23521–2850
N53999 (MAJ00060)—J0Q–R
Seal Team Six, Naval Amphibious Company, Norfolk, VA 23521
N55105 (MAJ00060)—NMC
Amphibious Construction Batallion Two, 1815 Seabee Drive, Norfolk, VA 23701
N55131 (MAJ00060)—J0A–B
Cargo Handling and Port Group, Williamsburg, VA 23187–5792
N55271 (MAJ00070)—LP8
Commander, Combat Logistics Group One (N716), Building 221–2W, NSC, Oakland, CA 94625–5309
N55322 (MAJ00060)—LHN
Explosive Ordnance Disposal Group Two, Fort Story, VA 23459–5024
N55418 (MAJ00070)—V50
Naval Antarctic Support Unit, (Christchurch, New Zealand), FPO AP 96531
N57007—VO
Commander, Middle East Force, (Jufair, Bahrain), FPO AE 09834
N57012—GQ
Commander Naval Air Force, U.S. Atlantic Fleet, Naval Air Station, Norfolk, VA 23511
N57016 (MAJ00060)—J0N
Commander Submarine Force, U.S. Atlantic Fleet, Norfolk, VA 23511–6296
N57023—GT
Commander, Operational Test and Evaluation Force, Naval Base, Norfolk, VA 23511
N57032 (MAJ00061)—NLF–H
Naval Air Facility, (Mildenhall, UK), FPO AE 09459
N57049 (MAJ00060)—JOE–F, V–X
Naval Support Facility (Antigua, West Indies), FPO AA 34054
N57053 (MAJ00070)—LPQ
Naval Facility, Centreville Beach, Ferndale, CA 95536–9766
N57070 (MAJ00060)—LH7
Commander, Undersea Surveillance, U.S. Atlantic Fleet, Norfolk, VA 23511–6687
N57075 (MAJ00060)—LH9
Commanding Officer, Naval Facility (Argentia, Canada), FPO AE 09730
N57092 (MAJ00070)—V5U
Naval Inshore Undersea Warfare Group One, Building 184, Box 357140NOLF, Imperial Beach, CA 92135–7140
N57095 (MAJ00060)—LH0–1
Atlantic Fleet Headquarters Support Activity, CINCLANTFLEET, Norfolk, VA 23511
N57100 (MAJ00070)—LP0–1
Naval Special Warfare Group One, NAVPHIBASE Coronado, San Diego, CA 92155
N60002 (MAJ00018)—QAD
Commanding Officer, Naval Hospital, Millington, TN 38054
N60028—QC
Naval Station, Treasure Island, San Francisco, CA 94130
N60036—QD
Naval Weapons Station, Concord, CA 94520
N60042 (MAJ00070)—LPU
Naval Air Facility, El Centro, CA 92243
N60050—HD
Marine Corps Air Station, El Toro, Santa Ana, CA 92709
N60087—3P
Naval Air Station, Brunswick, ME 04011
N60169—W0
Commanding Officer, Marine Corps Air Station, Beaufort, SC 29904
N60191—4A
Naval Air Station, Oceana, Virginia Beach, VA 23460
N60200—3G
Commanding Officer, Naval Air Station, Cecil Field, FL 32215
N60201—L7

Commanding Officer, Naval Air Station, P.O. Box M, Mayport, FL 32228
N60211—3D
Naval Auxiliary Landing Field, Crows Landing, CA 95313
N60234—4R
Naval Air Station, Whiting Field, OLF Saufley Field, Pensacola, FL 32508
N60241—3X
Commanding Officer, Naval Air Station, Bldg. 2701, Kingsville, TX 78363
N60258—GK
Long Beach Naval Shipyard, Long Beach, CA 90801
N60259—H9
Naval Air Station, Miramar, San Diego, CA 92145–5000
N60268 (MAJ62980)—MQ0–1
Navy Recruiting District Chicago, Glenview, IL 60026–5200
N60376—3Y
Commanding Officer, Naval Air Station, Chase Field, Beeville, TX 78103
N60462—WE
Naval Air Station, Adak (Alaska), FPO AP 98506–1200
N60478—3C
U.S. Naval Weapons Station, Earle, Colts Neck, NJ 07722
N60495—3T
Naval Air Station, Fallon, NV 89406
N60508—4Q
Commanding Officer, Naval Air Station, Whiting Field, Milton, FL 32570
N60514—GL
Commanding Officer, Naval Station (Guantanamo Bay, Cuba), Box 33, FPO AE 09593
N60530—GM
Naval Air Warfare Center, Weapons Division, China Lake, CA 93555
N60656—GN
Navy Exchange, Naval Station, Annapolis, MD 21402
N60663—GR
Officer in Charge, Navy Resale Activity, Commissary Support Office, Naval Base, Bldg 2600, Great Lakes, IL 60088
N60666—GS
Navy Exchange, Naval Air Station, Key West, FL 33040
N60676—GX
Navy Resale and Services Support Office, Field Support Office Commissary Div., Naval Air Station, Mechanicsburg, PA 17055
N60681—HA
Commissary OPS Division, NAVRESSOFSO, Naval Station, San Diego, CA 92136
N60693—HB
Navy Resale Activity, Commissary Support Office, Naval Base Pearl Harbor, Box 110, Pearl Harbor, HI 96860
N60701—4M
Naval Weapons Station, Seal Beach, CA 90740
N60865 (MAJ00070)—V5X
Naval Forces, Marianas (Guam), FPO AP 96540
N60872 (MAJ00070)—V5T
Naval Magazine (Guam) FPO AP 96540–1300
N60895—HF
Commissary OPS Division, NAVRESSOFSO, Naval Air Station, Alameda, CA 94501
N60921 HG—FH
Commander, Naval Surface Warfare Center, Dahlgren Division, Detachment White Oak, 10901 New Hampshire Avenue, Silver Spring, MD 20903
N60935—HH
Commissary OPS Div, NAVRESSOFSO, Naval Air Station, Jacksonville, FL 32212
N60936—HJ
Navy Resale Activity Commissary Support Office, Naval Air Station, Pensacola, FL 32508
N60937—HK
Navy Exchange Det., Naval Support Activity, New Orleans, LA 70140
N60938—HL
Navy Resale Activity, Commissary Support Office, Naval Air Station, Corpus Christi, TX 78419
N60939—HM
Navy Exchange, Naval Air Station, Memphis 32, Millington, TN 38054
N60951 (MAJ00060)—LHU
Fleet Accounting and Disbursing Center, Operating Forces Accounting, U.S. Atlantic Fleet, Norfolk, VA 23511–6096
N60956 (MAJ00012)—V8J–N
Navy Regional Finance Center, Great Lakes, IL 60088–5797
N61115—HN
Navy Exchange Activity, Submarine Base, New London, Groton, CT 06340
N61119—HP
Naval Supply Depot, Guam, PSC 455, Box 190, FPO AP 96540–1500
N61165—NN
Supply Officer, Bldg NS46, Naval Station, Charleston, SC 29408–5000
N61174—7B
Naval Station, New York, Brooklyn, NY 11251
N61189 (MAJ00060)—J0T
Naval Station, Philadelphia, PA 19112
N61217—HQ
Navy Exchange, Naval Air Station, Bermuda, FPO AE 09727
N61331—HR
Naval Surface Warfare Center, Dahlgren Division, Coastal Systems Station, Panama City, FL 32407
N61337—H0
Commanding Officer, Naval Hospital, Beaufort, SC 29904
N61339—HT
Commanding Officer, Naval Training Systems Center (N–601), 12350 Research Parkway, Orlando, FL 32826–3275
N61414—4B

Naval Amphibious Base, Little Creek, Norfolk VA 23521
N61463 (MAJ00060)—LHB–D, LH2–4
Supply Officer, COMNAVBASE Supply, 1530 Gilbert Street, Suite 8, Norfolk, VA 23511–2793
N61466
Commander, Naval Base, Bldg NH48, Charleston, SC 29408
N61510—HU
Navy Exchange, Naval Station (Guam), Box 179, FPO AP 96540
N61533—HW
David W. Taylor Naval Ship Research and Development Laboratory, Annapolis, MD 21402
N61564—FS
Naval Hospital, NAVBASE (Guantanamo Bay, Cuba), FPO AE 09593
N61577 (MAJ00070)—V5P
Naval Air Station, Agana (Guam), Box 60, FPO AP 96540–1200
N61581 (MAJ00070)—4LT
Fleet Activities, Naval Base (Yokosuka, Japan), FPO AP 96349–1100
N61685 (MAJ00065)—S0A
Naval Oceanography Command Center (Guam), Box 12, FPO AP 96540–2926
N61726—QL
Naval Hospital, Naval Submarine Base, New London, Groton, CT 06349
N61751 (MAJ00018)—MCK,M,N,P
Naval Medical Research Unit No. 3, Cairo (Egypt), PSC 452, Box 5000, FPO AE 09835–1600
N61755 (MAJ00070)—V5E
Naval Station (Guam), FPO AP 96540–1000
N61762—HY
Naval Ordnance Missile Test Station, White Sands Missile Range, NM 88002
N62021—7V
Naval Amphibious Base, Coronado, San Diego, CA 92155
N62161—HZ
Navy Exchange Det, NAVCOMSTA, Rough and Ready Island, Stockton, CA 95203
N62190 (MAJ00014)—EEY
Commanding Officer, Naval Research Laboratory, Underwater Sound Reference Detachment, P.O. Box 8337, Orlando, FL 32856
N62191 (MAJ00062)—L97
Commanding Officer, Naval Reserve Officers Training Corps, and Naval Administrative Unit, Room 20E–125, Massachusetts Institute of Technology, Cambridge, MA 02139
N62254 (MAJ00070)—4LX
Commander Fleet Activities, Okinawa, Naval Air Facility, Kadena (Ryukyu Islands Southern), Box SU/CR, FPO AP 96370–1100
N62269—JC
Commander, Naval Air Warfare Center, Aircraft Division Warminster, Warminster, PA 18974
N62271—QE
Naval Postgraduate School, Monterey, CA 93940
N62285 (MAJ00065)—S00–1
Naval Observatory, Washington, DC, 34th and Massachusetts Avenue, NW, Washington, DC 20390–5100
N62306—7C
Commanding Officer (Code 4410), Naval Oceanographic Office, Stennis Space Center, Bay St. Louis, MS 39552
N62367 (MAJ00023)—4JC
Navy Clothing and Textile Research Facility, 21 Strathmore Road, Natick, MA 01760–2490
N62376—4K
Commanding Officer, Naval Air Warfare Center, Aircraft Division Trenton, P.O. Box 7176, Trenton, NJ 08628
N62381—JG
Military Sealift Command, Atlantic, Military Ocean Terminal, Building 42, Bayonne, NJ 07002
N62382
Military Sealift Command Office, Gulf Subarea, 4400 Dauphin Street, New Orleans, LA 70146
N62383—JH
Military Sealift Command, Pacific, Naval Supply Center, Oakland, CA 94625
N62387
Commander, Military Sealift Command, Central Technical Activity (Code M10–3), 4228 Wisconsin Avenue, Washington, DC 20016
N62395—JK
Navy Public Works Center, (Mariana Islands, Guam), FPO AP 96540–2937
N62401—3F
Defense Printing Service Branch Office, The Pentagon, Washington, DC 20350–3000
N62404—JJ
Military Sealift Command, Far East, (Yokohama, Japan), FPO AP 96347
N62410 (MAJ00022)—MQ6
Navy Recruiting District, P.O. Box 8667, Albuquerque, NM 87198–8667
N62412 (MAJ00022)—MLR
Commanding Officer, Navy Recruiting District, Perry Hill Office Park, 3815 Interstate Court, Montgomery, AL 36109–5294
N62415 (MAJ00022)—MLX
Commanding Officer, Navy Recruiting District, Strom Thurmond Federal Bldg., Suite 771, 1835 Assembly Street, Columbia, SC 29201–2430
N62416 (MAJ00022)—NV0–1
Navy Recruiting District Columbus, Room 609 Federal Building, 200 North High Street, Columbus, OH 44142–2474
N62419
Commanding Officer, Navy Recruiting District, Melrose Bldg., 1121 Walker Street, Houston, TX 77002
N62421 (MAJ00022)—MQM

Commanding Officer, Navy Recruiting District, 8925 North Meridian Street, Room 250, Indianapolis, IN 46260

N62422

Commanding Officer, Navy Recruiting District, 2974 Woodcock Drive, Jacksonville, FL 32207

N62423

Commanding Officer, Navy Recruiting District, 301 Center Street, Little Rock, AR 72201

N62425 (MAJ00022)—MQ8

Commanding Officer, Navy Recruiting District, 1808 West End Avenue, Suite 1312, Nashville, TN 37203

N62427 (MAJ00022)—MLP

Navy Recruiting District Omaha, Overland-Wolf Building, 6910 Pacific, Omaha, NE 68106

N62429 (MAJ00022)—MLE

Navy Recruiting District Portland, 1220 SW Third Avenue, Suite 576, Portland, OR 97204

N62430

Commanding Officer, Navy Recruiting District, 1001 Navaho Drive, Raleigh, NC 27609

N62432 (MAJ00022)—MQG

Navy Recruiting District, St. Louis, 1222 Spruce Street, St. Louis, MO 63103–2814

N62435 (MAJ00022)—MQE

Navy Recruiting District Boston, 495 Summer Street, Boston, MA 02210–2103

N62437 (MAJ00022)—MQ4

Commanding Officer, Navy Recruiting District, 918 So. Ervay Street, Dallas, TX 75201

N62438 (MAJ00022)—MLQ

Navy Recruiting District Denver, Capital Life Center, 3rd Floor, 1600 Sherman Street, Denver, CO 80203–1668

N62440 (MAJ00022)—MLT

Navy Recruiting District, 2420 Broadway, Kansas City, MO 64108

N62441 (MAJ00022)—MLG

Navy Recruiting District Los Angeles, 5051 Rodeo Road, Los Angeles, CA 90016

N62442

Commanding Officer, Navy Recruiting District Atlanta, 612 Tinker Street, Suite C, Marietta, GA 30060

N62443 (MAJ00022)—MLV

Navy Recruiting District, Federal Office Building, 2nd & Washington Avenues, S., Minneapolis, MN 55401

N62444 (MAJ00022)—NVA

Commanding Officer (Code 602–2C), Navy Recruiting District, 4400 Dauphine Street, New Orleans, LA 70146

N62448 (MAJ00022)—MLN

Navy Recruiting District San Francisco, 1500 Broadway, Room 210, Oakland, CA 94612–1430

N62449 (MAJ00022)—MLC

Navy Recruiting District Seattle, Naval Station, Building 30, Seattle, WA 98115–5105

N62467—JM

Commanding Officer, Naval Facilities Engineering Command, Southern Division, (SOUTHNAVFACENGCOM), 2155 Eagle Drive, P.O. Box 10068, Charleston, SC 29411–0068

N62470—JN

Naval Facilities Engineering Command, Atlantic Division, Norfolk, VA 23511

N62471—N7

Officer in Charge of Construction, Naval Facilities Engineering Command, Contracts, Mid-Pacific, Pearl Harbor, HI 96860

N62472—JP

Naval Facilities Engineering Command, Northern Division, 10 Industrial Highway, Mail Stop #82k Lester, PA 19113

N62474—JR

Naval Facilities Engineering Command, Western Division, San Bruno, CA 94066

N62477—JU

Naval Facilities Engineering Command, Chesapeake Division, Washington Navy Yard Washington, DC 20374

N62481—N8

Naval Air Station (Bermuda), FPO AE 09727

N62507 (MAJ00070)—4LJ

Commanding Officer, Naval Air Facility (Atsugi, Japan), Box 3, FPO AP 96306–1200

N62522—JV

Military Sealift Command, Europe, (London, UK), Box 3, FPO AE 09499–3700

N62535—HE

Marine Corps Air Station (HELO), Tustin, CA 92710

N62537

Military Sealift Command, Mediterranean Sub-Area, (Naples, Italy), Box 23, FPO AE 09619–0600

N62538—K1

Military Sealift Command Office, Middle Atantic, NSC, Bldg Y100A, Norfolk, VA 23512

N62539

Military Sealift Command Office, United Kingdom, (London, UK), Box 29, FPO AE 09499–3700

N62573—K8

Marine Corps Air Station, New River Plaza, Jacksonville, NC 28540

N62576 (MAJ00023)—4JG

Defense Printing Service Branch Office, 700 Robbins Avenue, Philadelphia, PA 19111–5094

N62578—J2

Naval Construction Battalion Center, Davisville, RI 02854

N62583—J3

Naval Construction Battalion Center, Port Heuneme, CA 93041

N62585—K3

Commander, Naval Activities, United Kingdom, (London, UK), FPO AE 09499
N62586 (MAJ00070)—V5A–B
Naval Ship Repair Facility (Guam), FPO AP 96540
N62588—NR
Naval Support Activity (Naples, Italy), FPO AE 09619
N62593
Director, Defense Printing Service Det Office, Southeast Div., 4400 Dauphine St., Unit 601–3–B, New Orleans, LA 70146
N62603
Commanding Officer Fleet & Mine Warfare Training Center Naval Base, Bldg 647 Charleston, SC 29408
N62604—J4
Commanding Officer, Naval Construction Battalion Center, Gulfport, MS 39501
N62613 (MAJ00027)—MUE
Commanding Officer, Marine Corps Air Station, (Iwakuni, Japan), FPO AP 96310
N62638 (MAJ00072)—LCN
Naval Inshore Undersea Warfare Group Two, NSC Cheatham Annex, Bldg. 111, Williamsburg, VA 23187–8792
N62645—EG
Naval Medical Logistics Command, Fort Detrick, Frederick, MD 21701–5015
N62649—JY
Naval Supply Depot (Yokosuka, Japan), FPO AP 96349
N62651
Director, Defense Printing Service Office, Southeast Division, Pensacola, FL 32508
N62653 (MAJ00023)—4JW–X
Director, Defense Printing Service Branch Office, Southeast Division, Bldg. 1628, Naval Base, Charleston, SC 29408
N62654 (MAJ00019)—EFE
Naval Weapons Evaluation Facility, Kirtland AFB, Albuquerque, NM 87117
N62661 (MAJ00062)—L97
Naval Education and Training Center, Newport, RI 02841–5000
N62665—JQ
Supervisor of Shipbuilding, Conversion, and Repair, USN, Barnes Building—6th Floor, 495 Summer Street, Boston, MA 02210
N62670—8B
Supervisor of Shipbuilding, Conversion and Repair, USN, Drawer T, Mayport Naval Station, Jacksonville, FL 32228
N62673—8P
Supervisor of Shipbuilding, Conversion and Repair, USN, Naval Base, Charleston, SC 29408
N62678—8C
Supervisor of Shipbuilding, Conversion and Repair, USN, P.O. Box 215, Portsmouth, VA 23705
N62686—T0
Defense Printing Service Office, Naval District Washington, Building 157–2, Washington Naval Yard, Washington, DC 20374–1572
N62688—GW
Naval Station, Naval Base, Norfolk, VA 23511–6002
N62695
Auditor General of the Navy, Naval Audit Services Headquarters, P.O. Box 1206, Falls Church, VA 22041
N62700 (MAJ00023)—4JJ
Defense Printing Service Detachment Office, Northern Division, Bldg 2A, Great Lakes, IL 60088–5708
N62703 (MAJ00023)—4JA
Defense Printing Service Branch Office, Bldg 530, Puget Sound Naval Shipyard, Bremerton, WA 98314
N62705 (MAJ00023—4JN
Defense Printing Service Detachment Office, Naval Supply Center, Oakland, CA 94625–5045
N62706—JS
Defense Printing Service Branch Office, Western Division, Bldg. 154, San Diego, CA 92136–5148
N62707 (MAJ00023)—4JS–U
Defense Printing Service Detachment Office, Western Area, Pearl Harbor, Box 126, Pearl Harbor, HI 96860–5120
N62735 (MAJ00070)—4LP
Commander, Fleet Activities, (Sasebo, Japan), PSC 476, Box 1, FPO AP 96322–1100
N62741—MB
Commanding Officer, Navy Supply Corps School, Code 60, Athens, GA 30606
N62742—KB
Naval Facilities Engineering Command, Pacific Division, Pearl Harbor, HI 96860
N62745 (MAJ00025)—FZC–E
Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, Mediterranean (Madrid, Spain), APO AE 09642
N62755—J7
Commanding Office, Navy Public Works Center, Pearl Harbor, HI 96860–5470
N62757 (MAJ00072)—9TV–Y
Naval Reserve Center, 7410 West Roosevelt Road, Forest Park, IL 60130–2592
N62762 (MAJ00024)—EHU–W
Navy Shipbuilding Liaison Office, Spain, Box 36, (Madrid, Spain), APO AE 09642
N62766—L1
Officer in Charge of Construction, Naval Facilities Engineering Command Contracts (Guam), FPO AP 96540
N62786—ER
Supervisor of Shipbuilding, Conversion and Repair, USN, 574 Washington Street, Bath, ME 04530–0998
N62789—L8
Supervisor of Shipbuilding, Conversion and Repair, USN, Groton, CT 06340
N62791—NU

Supervisor of Shipbuilding, Conversion and Repair, USN, Naval Station, Box 119, San Diego, CA 92136–5119
N62793—4T
Supervisor of Shipbuilding, Conversion and Repair, USN, Newport News, VA 23607–2785
N62794—7D
Supervisor of Shipbuilding, Conversion and Repair, USN, Flushing & Washington Avenues, Brooklyn, NY 11251–9000
N62795—7F
Supervisor of Shipbuilding, Conversion and Repair, USN, Pascagoula, MS 39568–2210
N62798—4X
Supervisor of Shipbuilding, Conversion and Repair, USN, San Francisco, CA 94124–2996
N62799—7M
Supervisor of Shipbuilding, Conversion and Repair, USN, Seattle, WA 98115–5001
N62802 (MAJ00012)—V8P
Naval Audit Service Northeast Region, 5 Executive Campus, Suite 200, Cherry Hill, NJ 08002–4104
N62808 (MAJ00025)—FZ0
Public Works Center, Subic Bay (Luzon, Republic of the Philippines), FPO AP 96451–2900
N62816 (MAJ00023)—L5A–C
Defense Printing Service Det. Br. Office (Naples, Italy), Box 108, FPO AE 09619
N62832
Naval Activities (Rota, Spain), FPO AE 09645
N62836—L4
Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, Far East, Yokosuka, Box 61, FPO AP 96349
N62841 (MAJ00030)—EKA
Commanding Officer, Naval Ordnance Test Unit, Cape Canaveral, FL 32920–1623
N62844—K0
Naval Imaging Command, Washington Navy Yard, Washington, DC 20350–2000
N62849 (MAJ00019)—EFC
Naval Aviation Engineering Service Unit, Philadelphia, PA 19112–5088
N62852
Naval Electronic System Security Engineering Center, Naval Security Station, 3801 Nebraska Avenue, NW., Washington, DC 20390
N62856 (MAJ00060)—LHW–X
Naval Air Facility (Lajes Azores, Portugal), APO AE 09720–5000
N62863—K4
Naval Station (Rota, Spain), FPO AE 09645
N62864—L2
Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, Southwest Pacific (Manila, Philippines), APO AP 96440
N62892 (MAJ00069)—8QA
Commanding Officer, Naval Security Group Activity, Site ''B'', Card Sound Road, Homestead, FL 33039–6428
N62894 (MAJ00070)—4LA
Commander, U.S. Naval Forces Korea (Yongsan, South Korea), APO AP 96205–0023
N62907—KG
Naval Plant Representative Office, Applied Physics Laboratory, Johns Hopkins Road, Laurel, MD 20810
N62908—8D
Naval Weapons Engineering Support Activity, Washington Navy Yard, Washington, DC 20374
N62911 (MAJ00022)—MQC
Navy Recruiting Area One, Scotia, NY 12302–9462
N62913 (MAJ00022)—MLL
Commander, Naval Recruiting Area Three, 451 College Street, P.O. Box 4887, Macon, GA 31208–4887
N62915 (MAJ00022)—MQJ
Navy Recruiting Area Five, Building 3, NTC, Great Lakes, IL 60088–5135
N62917 (MAJ00022)—ML0–1
Commander, Navy Recruiting Area Seven, 1499 Regal Row, Suite 501, Dallas, TX 75247
N62918 (MAJ00022)—MLA
Naval Recruiting Area Eight, 7677 Oakport Street, Suite 650, Oakland CA 94621–1929
N62922—7W
Resident Officer in Charge of Construction, Pacific, Department of the Navy, P.O. Box 418, San Bruno, CA 94067
N62954 (MAJ00022)—MQN
Navy Recruiting District Cleveland, 17535 Rosbough Boulevard, Middleburgh Heights, OH 44130
N62974—JB
Marine Corps Air Station, Yuma, AZ 85364
N62980 (MAJ00022)—MQR–Z
Bureau of Naval Personnel, Washington, DC 20370–5000
N62990—L3
Supervisor of Shipbuilding, Conversion and Repair, USN, P.O. Box 26, Sturgeon Bay, WI 54235
N62995—4H
Naval Air Station, Sigonella (Italy), FPO AE 09627
N63005 (MAJ00011)—LBL–N
Commanding Officer, Administrative Support Unit, Bahrain, FPO AE 09834
N63007 (MAJ00060)—LHS
Nuclear Weapons Training Group, Atlantic, Norfolk, VA 23511
N63015—7Y
Naval Education and Training Support Center, Pacific, Fleet Station PO Bldg, San Diego, CA 92132
N63026 (MAJ00027)—MUJ
Marine Corps Air Station (Futenma, Japan), FPO AP 96372–5001
N63028—U2

Polaris Missile Facility Atlantic, Charleston, SC 29408
N63032—KS
U.S. Naval Station, Keflavik (Iceland), FPO AE 09728
N63038—8M
U.S. Naval Computer and Telecommunications Station, Cutler, East Machias, ME 04630
N63042—NZ
Naval Air Station, Lemoore, CA 93245
N63043—3S
Commanding Officer, Naval Air Station, Meridian, MS 39301
N63051 (MAJ0004)—LB8
Commanding Officer, Naval Investigative Service, Southeast Region, Naval Base, Building NH 53, Charleston, SC 29408–6425
N63053
Commanding Officer, Naval Investigative Service Regional Office, P.O. Box 6438, New Orleans, LA 70174
N63055 (MAJ00011)—LBJ
Naval Investigative Service, Mid-Atlanta Region Norfolk, 293 Independence Blvd, Suite 525, Pembroke 5, Virginia Beach, VA 23462
N63058 (MAJ00011)—LBC
Naval Investigative Service, Northwest Region, P.O. Box 4247, Walnut Creek, CA 94596
N63073 (MAJ00069)—8Q6–8
U.S. Naval Security Group Activity RAF (Edzell UK), FPO AE 09419
N63080—KT
Navy Resale Activity, Chinhae (South Korea), FPO AP 96269
N63082
Commanding Officer, Naval Technical Training Center, Corry Station (Code 4460), Pensacola, FL 32511
N63110
Commanding Officer, Chief of Naval Air Training (Code N–73), Naval Air Station, Corpus Christi, TX 78419
N63111
Commanding Officer, Chief of Naval Technical Training, Naval Air Station, Memphis, Millington, TN 38054
N63124 (MAJ00024)—U00–9
Supervisor of Shipbuilding, Conversion and Repair, USN, New Orleans, LA 70146
N63134—7R
Fleet Numerical Oceanography Center, Monterey, CA 93940
N63135 (MAJ00023)—4JD–E
Defense Printing Service Management Office, Washington, DC 20374–1762
N63136
Navy Section, U.S. Military Group, Argentina (Buenos Aires), Department of State, Washington, DC 20521
N63143—8K
Naval Computer and Telecommunications Station (Keflavik, Iceland), Box 22, FPO AE 09728
N63152—GZ
Fleet Combat Direction Systems Support Activity, San Diego, CA 92147–5081
N63165—7U
Navy Regional Data Automation Center, Washington, Washington Navy Yard, Washington, DC 20374
N63182—8T
Naval Computer and Telecommunications Station (Rota, Spain), FPO AE 09644
N63200 (MAJ00011)—LBB
Commanding Officer, Naval Satellite Operations Center, Point Mugu, CA 93042–5013
N63204—KV
Naval Plant Representative Office, Goodyear Aerospace Corp., Akron, OH 44305
N63209 (MAJ00062)—L9A
Commanding Officer, Naval Reserve Officers Training Corps Unit, University of New Mexico, Albuquerque, NM 87106
N63210 (MAJ00062)—L9B
Commanding Officer, Naval Reserve Officers Training Corps Unit, Iowa State University of Science and Technology, Ames, IA 50011–3010
N63211 (MAJ00062)—L9C
Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Michigan, Ann Arbor, MI 48109–1085
N63212 (MAJ00062)—L9G
Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Texas at Austin, Austin, TX 78712
N63213 (MAJ00062)—L9J
Commanding Officer, Naval Reserve Officers Training Corps Unit, University of California, Berkeley, CA 94720–0001
N63214 (MAJ00062)—L9M
Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Colorado, Box 374, Boulder, CO 80309–0374
N63215 (MAJ00062)—L9U
Commanding Officer, Naval Reserve Officers Training Corps Unit, Illinois Institute of Technology, 3300 S. Federal Street, Chicago, IL 60616–3793
N63216 (MAJ00062)—L9W
Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Missouri, Columbia, MO 65201
N63217 (MAJ00062)—L9Z
Commanding Officer, Naval Reserve Officers Training Corps Unit, Oregon State University, Corvallis, OR 97331
N63218 (MAJ00062)—ROB
Commanding Officer, Naval Reserve Officers Training Corps Unit, Northwestern University, Evanston, IL 60201
N63219 (MAJ00062)—R0E, L99
Commanding Officer, Naval Reserve Officers Training Corps Unit, Rice University, P.O. Box 1892, Houston, TX 77001
N63220 (MAJ00062)—R0L
Commanding Officer, Naval Reserve Officers Training Corps Unit, UCLA, Mens Gym Room 123, 405 Milgard Avenue, Los Angeles, CA 90024–1399
N63221 (MAJ00062)—8AB

Commanding Officer, Naval Reserve Officers Training Corps Unit, PED 101, University Park MC 0654, University of Southern California, Los Angeles, CA 90089–0654

N63222 (MAJ00062)—R0H
Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Kansas, Lawrence, KS 66044

N63223 (MAJ00062)—R0K
Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Nebraska, Lincoln, NE 68508

N63224 (MAJ00062)—8AD
Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Wisconsin, 1610 University Avenue, Madison, WI 53705

N63225 (MAJ00062)—8AH
Commanding Officer, Naval Reserve Officers Training Corps Unit, Marquette University, Milwaukee, WI 53233

N63226 (MAJ00062)—8AJ
Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Minnesota, Minneapolis, MN 55455–0108

N63227 (MAJ00062)—8AK
Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Idaho, Moscow, ID 83843–3244

N63228 (MAJ00062)—8AM
Commanding Officer, Naval Reserve Officers Training Corps Unit, Tulane University, New Orleans, LA 70118

N63229 (MAJ00062)—8AN
Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Oklahoma, Norman, OK 73019

N63230 (MAJ00062)—8AR
Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Notre Dame, Notre Dame, IN 46556–5601

N63231 (MAJ00062)—8AW
Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Utah, Salt Lake City, UT 84112–1107

N63232 (MAJ00062)—8AY
Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Washington, Seattle, WA 98195

N63234 (MAJ00062)—J9Q
Commanding Officer, Naval Reserve Officers Training Corps Unit, 505 East Armory Street, University of Illinois, Champaign, IL 61820–6288

N63235 (MAJ00062)—R05
Commanding Officer, Naval Reserve Officers Training Corps Unit, Purdue University, West Lafayette, IN 47907–0001

N63273—4S
Fleet Combat Direction Systems Support Activity, Dam Neck, Port Hueneme Division, Naval Surface Warfare Center, Virginia Beach, VA 23461

N63285 (MAJ00011)—LB0
Naval Security and Investigative Command, Washington, DC 20388

N63290 (MAJ00062)—R00–1
Commanding Officer, Combat Systems Technical Schools Command, Mare Island, Vallejo, CA 94592

N63291 (MAJ00062)—R0F
Commanding Officer, Naval Reserve Officers Training Corps Unit, Barton Hall, Cornell University, Ithaca, NY 14853

N63294 (MAJ00062)—8AV
Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Rochester, Rochester, NY 14627

N63295 (MAJ00062)—R0M
Commanding Officer, Naval Reserve Officers Training Corps Unit, Rensselaer Polytechnic Institute, Troy, NY 12180–3590

N63296 (MAJ00062)—L9F
Commanding Officer, Naval Reserve Officers Training Corps Unit, Auburn University, Auburn, AL 36830

N63299 (MAJ00062)—R0A
Commanding Officer, Naval Reserve Officers Training Corps Unit, Duke University, Durham, NC 27706

N63301 (MAJ00062)—L9D
Commanding Officer, Naval Reserve Officers Training Corps Unit, Georgia Tech, Atlanta, GA 30313

N63303 (MAJ00062)—R0U
Commanding Officer, Naval Reserve Officers Training Corps Unit, College of the Holy Cross, Worcester, MA 01610–2389

N63306 (MAJ00062)—8AS
Commanding Officer, Naval Reserve Officers Training Corps Unit, Miami University, Oxford, OH 45056–1698

N63307 (MAJ00062)—R0N
Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Mississippi, Box 69, University, MS 38677

N63308 (MAJ00062)—L9R
Commanding Officer, Naval Reserve Officers Training Corps Unit, University of North Carolina, Chapel Hill, NC 27515

N63309 (MAJ00062)—L9Y
Commanding Officer, Naval Reserve Officers Training Corps Unit, The Ohio State University, Columbus, OH 43210–1169

N63310 (MAJ00062)—R0P
Commanding Officer, Naval Reserve Officers Training Corps Unit, Wagner Bldg., The Pennsylvania State University, University Park, PA 16802

N63311 (MAJ00062)—8AT
Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Pennsylvania, Philadelphia, PA 19104

N63313 (MAJ00062)—L9X
Commanding Officer, Naval Reserve Officers Training Corps Unit, University of South Carolina, Columbia, SC 29208

N63315 (MAJ00062)—8AL
Commanding Officer, Naval Reserve Officers Training Corps Unit, Vanderbilt

University (Westside Hall), Nashville, TN 37240
N63316 (MAJ00062)—R0R
Commanding Officer, Naval Reserve Officers Training Corps Unit, Villanova University, Villanova, PA 19085–1699
N63317 (MAJ00062)—L9T
Commanding Officer, Naval Reserve Officers Training Corps Unit, Maury Hall, University of Virginia, Charlottesville, VA 22903–3194
N63325—7X
Naval Education & Training Support Center, Atlantic, Bldg. Z–86, Naval Station, Norfolk, VA 23511
N63339—LL
Navy Exchange, Naval Air Station, Adak (Alaska), FPO AP 96506
N63340—LM
Navy Exchange, Newfoundland (Argentia, Canada), FPO AE 09730
N63341—LN
Navy Exchange Det., Naval Air Station, Chase Field, Beeville, TX 78102
N63344—LR
Navy Commissary Store Region, Charleston, SC 29408
N63345—LS
Navy Exchange, Naval Station, Guantanamo Bay (Cuba), FPO AE 09731
N63346—LT
Navy Resale Activity, Commissary Support Office, Naval Station, Keflavik (Iceland), FPO AE 09728
N63348—LV
Navy Exchange Det., Naval Air Station, Kingsville, TX 78364
N63349—LW
Navy Exchange, Naval Air Station, Lemoore, CA 93246
N63350—3L
Navy Exchange (Dunstable, UK), FPO AE 09499
N63351—LY
Navy Commissary Store Region, Naval Station, Long Beach, CA 90802
N63352—KE
Navy Exchange Det., Naval Air Station, Meridian, MS 39301
N63353—MA
Officer in Charge, Navy Resale Activity, Commissary Support Office, Naval Support Activity, Naples (Italy), FPO AE 09619
N63357—ME
Navy Exchange, Naval Station, Rota (Spain), FPO AE 09645
N63362—MK
Officer in Charge, Navy Resale Activity, Commissary Support Office, Naval Station (Subic Bay, Philippines), P.O. Box 28, FPO AP 96451
N63365—MN
Navy Resale Activity, Commissary Support Office (Yokosuka, Japan), Box 33, FPO AP 96349
N63367—MP
Officer in Charge, Commissary OPS Div., Navy Resale and Services Support Office, Field Support Office, Norfolk, VA 23511
N63369
Military Sealift Command Office, Benelux (Rotterdam, Netherlands), APO AE 09715
N63381 (MAJ00011)—LBA
Joint U.S. Military Advisory Group, Thailand (Bangkok, Thailand), APO AP 96546
N63387—JD
Navy Public Works Center, Naval Base, San Diego, CA 92136
N63394—L6
Naval Surface Warfare Center, Port Hueneme Division, Port Hueneme, CA 93043
N63395—8L
U.S. Naval Communication Station Thurso (Caithness, UK), FPO AE 09418
N63402—K7
Commanding Officer, Strategic Weapons Facility, Pacific, Bremerton, WA 98383
N63406 (MAJ00070)—V5C
Naval Submarine Base San Diego, 140 Sylvester Road, San Diego, CA 92106–3521
N63408—HV
Navy Material Transportation Office, Norfolk, VA 23511–6691
N63410—KA
Navy Manpower and Material Analysis Center, Atlantic, Norfolk, VA 23511
N63427—8F
U.S. Naval Communication Station, Harold E. Holt, Exmouth, Western Australia, FPO AP 96550
N63429—MH
Naval Computer and Telecommunications Station London (UK), FPO AE 09499
N63439—K9
Naval Ophthalmic Support and Training Activity, Yorktown, VA 23690
N63543 (MAJ00072)—9TC
Naval Reserve Center, 3070 Ross Lane, Central Point, OR 97502–1399
N63821 (MAJ00039)—NSA–B
Officer in Charge, Naval Underwater Systems Center, AUTEC Andros Range Detachment (Andros Island, Bahama Islands), FPO AA 34058
N63886 (MAJ00069)—8Q0–1
Naval Security Group Activity (Adak, AK), FPO AP 96505
N63891 (MAJ00069)—8QG
Naval Security Group, Northwest, Chesapeake, VA 23322
N64165 (MAJ00062)—R0Z
Naval Unit, Lowry Air Force Base, CO 80230
N64181 (MAJ00062)—R0W
Department of Naval Science, Texas Maritime Academy, Galveston, TX 77553–1675
N64267—M9
Naval Warfare Assessment Center, Corona Annex, Corona, CA 91720
N64281—3U, KX

Commanding Officer, Naval Sea Combat Systems Engineering Station, Naval Station, Norfolk, VA 23511
N64356—KF
Commanding Officer, Naval Administrative Command, Armed Forces Staff College, Norfolk, VA 23511–6097
N64980 (MAJ00061)—NLA–C
Officer in Charge, Naval Weapons Facility, Detachment Machrihanish (UK), FPO AE 09422
N64981 (MAJ00061)—NL5–7
Commanding Officer, Naval Weapons Facility, (St. Mawgan, UK), FPO AE 09415
N65113—EZ
Navy Public Works Center, Bldg 1A, Great Lakes, IL 60088–5600
N65114 (MAJ00025)—EJC
Commanding Officer, Navy Public Works Center, Naval Air Station, Pensacola, FL 32508–6500
N65115 (MAJ00025)—FZA
Navy Public Works Center, Box 13 (Yokosuka, Japan), FPO AP 96349–3100
N65116—MZ
Officer in Charge, Navy-Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Washington Navy Yard, Washington, DC 20374–2001
N65146—7E
Procurement Branch, OP–09B31, Office of the Chief of Naval Operations Support Activity, Washington, DC 20350
N65198—3H
Naval Administrative Unit, 550 First Street, Idaho Falls, ID 83401
N65236—V7
Naval Electronic Systems Engineering Center, 4600 Goer Road, North Charleston, SC 29406
N65256 (MAJ00012)—V8C
Navy Office of Information, East, 133 East 58th Street, 1st Floor, New York, NY 10022
N65428 (MAJ00018)—MDP
Commanding Officer, Naval Hospital (Roosevelt Roads, PR), FPO AA 34051–8100
N65440—4V
Officer in Charge, Navy Exchange, NAVCOMMSTA Harold E. Holt, (Exmouth, Australia), FPO AP 96550
N65491 (MAJ00018)—J5P
Naval Hospital, (Subic Bay, Philippines), FPO AP 96452–1600
N65492 (MAJ00018)—MCA
Commanding Officer, Naval Hospital, Fiscal & Supply Service, Code 32C, Orlando, FL 32813–5200
N65497—4U
Commissary OPS Division, NAVRESSO, Field Support Office, 2801 ''C'' Street, SW, Auburn, WA 98001
N65538 (MAJ00024)—U0D
Naval Sea Logistics Center, 5450 Carlisle Pike, P.O. Box 2060, Mechanicsburg, PA 17055–0795
N65540 (MAJ00024)—EHP–S
Naval Ship System Engineering Station, Carderock Division, Naval Surface Warfare Center Naval Base, Philadelphia, PA 19112–5083
N65575 (MAJ00018)—MCY
Naval Medical Clinic, Seattle, WA 98115
N65576
Navy Space Systems Activity, P.O. Box 92960, Worldway Postal Center, Los Angeles, CA 90009
N65580—M2
Naval Electronic Systems Engineering Center, P.O. Box 55, Portsmouth, VA 23705
N65849 (MAJ00012)—HXY–Z
Office of Civilian Personnel Management, Southwest Region, San Diego, CA 92188
N65870—M4
Supervisor of Shipbuilding, Conversion and Repair, USN, Long Beach Naval Shipyard, Long Beach, CA 90822
N65886
Commanding Officer, Aviation Depot, Naval Air Station, Jacksonville, FL 32212
N65888—ED
Aviation Depot, North Island, San Diego, CA 92135
N65889
Commanding Officer, Aviation Depot, Naval Air Station, Code 56000, Pensacola, FL 32508
N65912—GP
Commanding Officer, Naval Sea Support Center, Atlantic, St. Juliens Creek Annex, Portsmouth, VA 23702
N65913—7L
Naval Sea Support Center, Pacific, San Diego, CA 92138
N65918—FT
Shore Intermediate Maintenance Activity, Naval Station, San Diego, CA 92136–5000
N65926 (MAJ00039)—NSA–B
Officer in Charge, Naval Underwater Systems Center Detachment, AUTEC West Palm Beach, West Palm Beach, FL 33402
N65928 (MAJ00062)—N3
Naval Training Center, Orlando, FL 32813
N65980 (MAJ00039)—NSL–N
Naval Electronic Systems Engineering Activity, St. Inigoes, MD 20684
N65995—KM
Officer in Charge, Naval Support Activity, (Holy Loch, UK), FPO AE 09416
N66001—7N
Naval Command Control and Ocean Surveillance Center, RDT&E Division, San Diego, CA 92152–5000
N66021—7G
Naval Air Pacific Repair Activity, (Atsugi, Japan), FPO AP 96306
N66022 (MAJ00018)—MDW
Naval Dental Center, San Diego, CA 92136–5147
N66074 (MAJ00062)—8AU

Commanding Officer, Naval Reserve Officers Training Corps Unit, Prairie View A&M University, Prairie View, TX 77445
N66094 (MAJ00018)—QAA–B
Naval Hospital, Cherry Point, NC 28533–5008
N66095 (MAJ00018)—J5E
Naval Hospital, NAS, Lemoore, CA 93246
N66096 (MAJ00018)—QAJ
Naval Hospital Naples, Box 19 (Naples, Italy), FPO AE 90619
N66097 (MAJ00018)—MDE
Naval Hospital, Oak Harbor, WA 98278–8800
N66101 (MAJ00018)—J5B–D
U.S. Naval Hospital ROTA, PSC 819, Box 18, FPO AE 09645–2500
N66125 (MAJ00070)—V5J
Naval Facility (Guam), FPO AP 96540–2903
N66231 (MAJ00072)—9TS
Naval Reserve Readiness Center, Bldg 2711, Naval Training Center, Great lakes, IL 60088–5707
N66398 (MAJ00022)—ML6–7
Navy Motion Picture Service, Flushing & Washington Avenues, Brooklyn, NY 11251–8400
N66458 (MAJ00065)—S0C
Naval Oceanography Command Facility, NAS, Brunswick ME 04011–5000
N66540 (MAJ00022)—NVZ
Morale, Welfare and Recreation Division, Bureau of Naval Personnel, Washington, DC 20370–5000
N66604—N4
Naval Undersea Warfare Center, Division Newport, Newport, RI 02840
N66612 (MAJ00062)—L95
Commanding Officer, Naval Reserve Officers Training, Corps Unit, The Citadel, Charleston, SC 29409–0770
N66630 (MAJ00072)—LCS
Naval Air Reserve, Naval Air Station, Point Mugu, CA 93042–5018
N66691—4P
Commanding Officer, Naval Support Activity, (Souda Bay, Crete, Greece), FPO AE 09865
N66715—VJ
Commander, Navy Recruiting Command, Washington, DC 22203–1191
N66753 (MAJ00062)—R0G
Commanding Officer, Naval Reserve Officers Training Corps Unit, Jacksonville University, Jacksonville, FL 32211
N66754 (MAJ00069)—8QX
Commanding Officer, Naval Security Group Activity, (Sabana Seca, PR), FPO AA 34053
N66809 (MAJ00062)—R0V
Commanding Officer, Naval Reserve Officers Training Corps Unit, Savannah State College, Savannah, GA 31404
N66810 (MAJ00062)—L9H
Commanding Officer, Naval Reserve Officers Training Corps Unit, Southern University and A&M College, Baton Rouge, LA 70813
N66833 (MAJ00060)—LHL
Commanding Officer, U.S. Naval Station Panama (Rodman, Canal Zone), FPO AA 34061–1000
N66863 (MAJ00018)—MCU–X
Commanding Officer, Naval Biodynamics Laboratory, 13800 Old Gentilly Road, Michout Assembly Facility, New Orleans, LA 70189
N66890—LJ
Naval Station, Mare Island, Supply and Fiscal Code 90, Bldg 851, Vallejo, CA 94592
N66898 (MAJ00018)—QAF
Commanding Officer, Naval Medical Clinic, New Orleans, LA 70142
N66957
Defense Printing Service Det. Office, Bldg. 2049, NTC, Orlando, FL 32813
N66959 (MAJ00023)—4JR
Defense Printing Service Det. Office, P.O. Box 3, NAS, Jacksonville, FL 32212
N66965 (MAJ00023)—4JQ
Defense Printing Service Det. Office, Point Mugu, CA 93042–5027
N66972 (MAJ00022)—MQ2
Commanding Officer, Navy Recruiting District, 8525 N.W. 53red Terrace, Suite 201, Miami, FL 33166
N67596 (MAJ00022)—NVD
Commanding Officer, Navy Recruiting District, 10500 N. U.S. Highway 281, Suite 108, San Antonio, TX 78216–3630
N68011
Commanding Officer, Navy Recruiting District, 8 North Third Street, Sterick Bldg., Memphis, TN 38103
N68047 (MAJ00070)—4L0
Naval Regional Contracting Center, (Singapore), FPO AP 96534–2100
N68056—JE
Naval Medical Command Southwest Region, San Diego, CA 92134
N68057—VZ
Commanding Officer, Naval Regional Data Automation Center, Code 212, Norfolk, VA 23511
N68064 (MAJ00062)—R0D
Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Florida, Van Fleet Hall, Room 26, Gainesville, FL 32601
N68072 (MAJ00062)—L9V
Commanding Officer, Naval Reserve Officers Training Corps Unit, Texas A&M University, College Station, TX 77843
N68073 (MAJ00063)—NTU
Naval Computer and Telecommunications Station Diego Garcia, (British Indian Ocean Territory), FPO AP 96464–0008
N68084 (MAJ00081)—MDJ–M
Commanding Officer (Code 206), Naval Hospital, Charleston, SC 29408–6900
N68086—7S
Naval Hospital, Newport, RI 02841
N68088 (MAJ00061)—NLL–N

National Support Unit Headquarters, Commander-in-Chief Iberian Atlantic Area, (Lisbon, Portugal), APO AE 09726–0001
N68090 (MAJ00018)—MD0–9
Naval Hospital, Long Beach, CA 90822–5199.
N68092
Naval Medical Command Northeast Region, Great Lakes, IL 60088
N68093 (MAJ00018)—MCG–H
Naval Hospital, Camp LeJeune, NC 28542–5008
N68094—V9
Naval Hospital, Camp Pendleton, CA 92055–5008
N68095—JF
Naval Hospital, Boone Road, Bremerton, WA 98312–1898
N68096 (MAJ00018)—J50
Commanding Officer, Naval Hospital (Guam), FPO AP 96540–1600
N68097
Naval Medical Command Northwest Region, Oakland, Ca 94627
N68098 (MAJ00018)—QAL–M
Naval Medical Clinic, Box 121 Code 01.3, Pearl Harbor, HI 96860–5080
N68101 (MAJ00018)—MDT–V
Naval Medical Clinic 17th Street and Pattison Avenue, Philadelphia, PA 19145–5199
N68139 (MAJ00062)—8AZ
Commanding Officer, Naval Reserve Officers Training Corps Unit, Florida A&M University, Tallahassee, FL 32307
N68141 (MAJ00062)—L9P—
Commanding Officer, Naval Reserve Officers Training Corps Unit, Maine Maritime Academy, Castine, ME 04421–0902
N68142—NK
Naval Computer & Telecommunications Station, Naval Air Station, Pensacola, FL 32508–6100
N68165 (MAJ00060)—J06–8
Naval Facility, (Brawdy, Wales, UK), FPO AE 09420
N68166 (MAJ00015)—L01–2k
Naval Technical Intelligence Center, 4301 Suitland Road, Washington, DC 20390
N68171—M3
Commanding Officer, Naval Regional Contracting Center, (Naples, Italy), PSC 810, Box 50, FPO AE 09619–3700
N68175 (MAJ00022)—MQA
Navy Recruiting District New Jersey, Parkway Towers, Building A, 485 US Route 1, So., Iselin, NJ 08830–3012
N68199
Commanding Officer, Navy Office of Information, Southeast, 1459 Peachtree Street, NE—Suite 300, Atlanta, GA 30309
N68200—VM
Dirctor, Navy Office of Information, Southwest, 1114 Commerce Street, Suite 811, Dallas, TX 75242
N68221—7J
Commanding Officer, Navy Personnel Research and Development Center, San Diego, CA 92152
N68246 (MAJ00070)—4LL–N
Officer in Charge, U.S. Naval Supply Depot Yokosuka Det., (Sasebo, Japan), FPO AP 96322–1500
N68248—V6
Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, Naval Submarine Base, Kings Bay, GA 31547
R68251 (MAJ00070)—LPC
Shore Intermediate Maintenance Activity, Box 141, Pearl Harbor, HI 96860
N68292 (MAJ00018)—J5A
Naval Hospital (Yokosuka, Japan), FPO AP 96350–1615
N68297—ET
Naval Magazine, Laualualie, Oahu HI 96792–4301
N68303 (MAJ00062)—R0C
Commanding Officer, Naval Reserve Officers Training Corps Unit, State University of New York, Maritime College, Fort Schuyler, Bronx, NY 10465–4198
N68306 (MAJ00072)—9TF
Commander, Naval Reserve Readiness Command, Region Six, WNY Bldg 200, Washington, DC 203774–2003
N68307 (MAJ00072)—LCJ
Commander, Code 431, Naval Reserve Readiness Command Region Ten, New Orleans, LA 70142
N68308 (MAJ00072)—9TQ
Naval Reserve Readiness Command, Region 20, Bldg 1, NAVSTA Treasure Island, San Francisco, CA 94130–5032
N68311—JL
Naval Station, Long Beach, CA 90822
N68317 (MAJ00062)—R03
Naval Administrative Unit, 1 Amsterdam Road, Scotia NY 12302–9460
N68322—7Z
Naval Education & Training Program Management Support Activity, Code SU1, Saufley Field, Pensacola, FL 32509
N68323 (MAJ00011)—LBC
Naval Legal Service Office, 200 Stovall Street, Alexandria, VA 22332–2400
N68326 (MAJ00018)—MDA
Naval Dental Center, 2707 Sheridan Road, Bldg 73, Great Lakes, IL 60088–5258
N68327 (MAJ00022)—ML8
Commanding Officer, Naval Reserve Personnel Center, New Orleans, LA 70149–7800
N68328 (MAJ00072)—9TJ
Naval Reserve Readiness Command, Region 22, Bldg 9, Naval Station, Seattle, WA 98115–5009
N68329 (MAJ00072)—LCL
Naval Reserve Readiness Command, Region Five, Bldg. 1033, USAAP, Ravenna, OH 44266–9211
N68330 (MAJ00072)—9TN

Naval Reserve Readiness Command, Region 13, Bldg 1, Code 712, NTC, Great Lakes, IL 60088–5026

N68331 (MAJ00072)—LCE–F
Naval Reserve Readiness Command, Region Four, Bldg. 662, Naval Base, Philadelphia, PA 19112

N68332 (MAJ00072)—9T0–1
Commander, Naval Reserve Readiness Command, Region 18, 301 Navy Drive, Industrial Airport, KS 66031–0031

N68335–4Y
Commanding Officer, Naval Air Warfare Center, Aircraft Division Lakehurst, Supply Dept., Purchase Division, Lakehurst, NJ 08733

N68348 (MAJ00072)—9TG
Commander, Naval Reserve Readiness Command, Region Nine, NAS Memphis (76), Bldg E–35, Millington, TN 38054

N68349
Commander, Naval Reserve Readiness Command, Region 16, Bldg. 715, Minneapolis-St. Paul IAP, Minneapolis, MN 55450–2996

N68350 (MAJ00072)—LCH
Naval Reserve Readiness Command, Region 19, 960 North Harbor Drive, San Diego, CA 92132–5108

N68351 (MAJ00072)—LCQ
Naval Reserve Readiness Command, Region One, Newport, RI 02840–5016

N68355 (MAJ00062)—R0J
Commanding Officer, Naval Reserve Officers Training Corps Unit, Virginia Military Institute, Lexington, VA 24450–2697

N68356 (MAJ00072)—9TD
Commander, Naval Reserve Readiness Command, Region Seven, Naval Base, Charleston, SC 29408

N68357 (MAJ00072)—9TL
Commander, Naval Reserve Readiness Command, Region Two, Scotia, NY 12302–9465

N68358 (MAJ00072)—9TA
Commander, Naval Reserve Readiness Command, Region Eight, Naval Air Station, Jacksonville, FL 32212

N68359 (MAJ00072)—9TB
Commander, Naval Reserve Readiness Command, Region Eleven, Bldg 11, Naval Air Station, Dallas, TX 75211

N68378—KQ
Navy Public Works Center, San Francisco Bay, Oakland, CA 94623

N68389 (MAJ00011)—LB4
Commander, Joint Intelligence Center, Pacific/DSL, P.O. Box 500, Bldg 352, Makalapa Drive, Pearl Harbor, HI 96860–7450

N68391 (MAJ00022)—MLB
Navy Recruiting District, Harrisburg, 310 North Second Street, Harrisburg, PA 17101–1304

N68401 (MAJ00022)—MLJ
Navy Recruiting District, San Diego, Naval Training Center, Building 335, San Diego, CA 92133–6800

N68402 (MAJ00012)—V8E
Navy Office of Information, New England Branch, 408 Atlantic Avenue, Boston, MA 02210–2203

N68409 (MAJ00018)—QAU
Naval Dental Center, San Francisco, CA 94130–5030

N68436—KC, J6
Naval Submarine Base, Bangor, Code 863, Bremerton, WA 98315

N68441
Commanding Officer, Naval Dental Clinic, Naval Air Station, Pensacola, FL 32508

N68443—7T
Commanding Officer, Naval Dental Clinic, Bremerton, WA 98314

N68451—MF
Navy Regional Data Automation Center San Francisco, Naval Air Station, Alamenda, CA 94501

N68470 (MAJ00018)—J5J–M
Naval Hospital, (Okinawa, Japan), FPO AP 96362

N68482 (MAJ00022)
Department of the Navy, BUPERS Det DAPMAL, Bldg 11, Naval Training Center, 32110 Perry Road, Suite 110, San Diego, CA 92133–1521

N68497
Commanding Officer, Code 40, Naval Administrative Command, Naval Training Station, Orlando, FL 32813

N68499—LX
Director, Naval Council of Personnel Boards, Ballston Center Tower #2, 801 North Randolph Street, Arlington, VA 2203–1989

N68518
Commanding Officer, Naval Reserve Financial Information Processing Center, Code S43, 4400 Dauphine Street, New Orleans, LA 70146

N68520—7P
Aviation Depot Operations Center, Naval Air Station, Patuxent River, MD 20670

N68527 (MAJ00072)—9TT
Naval & MC Reserve Readiness Center, Armed Forces Reserve Center, Floyd Bennett Field, Brooklyn, NY 11234–7097

N68546—QG
Navy Environmental Health Center, Naval Station, Norfolk, VA 23511

N68547 (MAJ00060)—LHQ
Personnel Support Activity, Naval Station, Norfolk, VA 23511–5115

N68560—QM
Naval Computer & Telecommunications Station, Jacksonville, FL 32212–0111

N68561 (MAJ00039)—NSE
Navy Management Systems Support Office, 1441 Crossways Blvd., Chesapeake, VA 23320–2843

N68573 (MAJ00023)—4JM

Navy Exchange Service Center, NAVABASE, Norfolk, Bldg CD–1, 9222 Hamption Blvd, Norfolk, VA 23511–6390

N68593 (MAJ00060)—LHE
Naval Ocean Processing Facility, Dam Neck, VA 23461–5450

N68608 (MAJ00011)—LBP–Y
Naval Computer Telecommunications Station, 4400 Dauphine Street, New Orleans, LA 70145–7700

N68610—GF
Officer in Charge, Fleet Hospital Support Office, 620 Central Ave., Bldg #5, Alameda, CA 94501–3874

N68636 (MAJ00024)—EHJ–K
Naval Sea Systems Command, Automated Data Systems Activity, P.O. Box 100, Indian Head, MD 20640–0100

N68689 (MAJ00024)—U0F
Human Resources Office, Crystal City, Washington, DC 20376

N68691—JW
Naval Plant Representative Office, (Melbourne, Australia), APO AP 96551

N68692 (MAJ00062)—8AX
Commanding Officer, Naval Reserve Officers Training Corps Unit, University of San Diego/San Diego State University, Alcala Park, San Diego, CA 92110–2496

N68695 (MAJ00060)—LHG
Shore Intermediate Maintenance Activity, Naval Reserve Maintenance Facility, Bldg. 133, Naval Base, Philadelphia, PA 19112–5066

N68699 (MAJ00062)—8AP
Commanding Officer, Naval Reserve Officers Training Corps Unit, Old Dominion University/Hampton Institute, Norfolk State University, 5215 Hampton Blvd., Norfolk, VA 23508–8556

N68707 (MAJ00072)—9TU
Naval Reserve Maintenance Training Facility, Puget Sound Naval Shipyard, Bremerton, WA 98314–5270

N68709 (MAJ00060)—J0C
Naval Air Station, Mayport, FL 32228

N68710 (MAJ00062)—L9K
Commanding Officer, Naval Reserve Officers Training Corps Unit, Virginia Polytechnic Institute and State University, Blacksburg, VA 24061–2306

N68717 (MAJ00062)—L9L
Commanding Officer, Naval Reserve Officers Training Corps Unit, Boston University, 116 Bay State Road, Boston, MA 02215

N68725 (MAJ00062)—R0Q
Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Arizona, Tucson, AZ 85721

N68726 (MAJ00062)—R0T
Commanding Officer, Naval Reserve Officers Training Corps Unit, The George Washington University, Washington, DC 20052

N68727 (MAJ00062)—8AF
Commanding Officer, Naval Reserve Officers Training Corps Unit, Memphis State University, Memphis, TN 38152–0001

N68728 (MAJ00062)—8AQ
Commanding Officer, Naval Reserve Officers Training Corps Unit, Norwich University, Northfield, VT 05663–1097

N68733 (MAJ00030)—EKC
Strategic Weapons Facility, Atlantic, Kings Bay, GA 31547–6600

N68742 (MAJ00070)—LPA
Naval Base, Seattle, WA 98115–5012

N68753 (MAJ00070)—V5L
Naval Air Pacific Repair Activity Det., Singapore, SAE Singapore, FPO AP 96536–2700

N68829 (MAJ00060)—J0J
Shore Intermediate Maintenance Activity (NRMF), Pier 2, Bldg. 68 NETC, Newport RI 02841–5001

N68831 (MAJ00070)—LPG
Shore Intermediate Maintenance Activity San Francisco, Bldg. 162, NAS, Alameda, CA 94501–5065

N68836—J9
Commanding Officer, Naval Supply Center, Jacksonville, FL 32212

N68857 (MAJ00062)—8AC
Commanding Officer, Naval Reserve Officers Training Corps Unit, Texas Tech University, Lubbock, TX 79409–4559

N68860—KR
Naval Supply Center—Pensacola, Pensacola, FL 32508–6200

N68875 (MAJ00018)—QAP–S
Naval Hospital (Keflavik, Iceland), PSC 1003, Box 8, FPO AE 09728–0308

N68877 (MAJ00062)—R0Y
Commanding Officer, Naval Reserve Officers Training Corps Unit, Carnegie Mellon University, Pittsburgh, PA 15213

N68881 (MAJ00062)—L9E
Commanding Officer, Naval Reserve Officers Training Corps Unit, Morehouse College, Atlanta, GA 30314

N68891 (MAJ00060)—LH5
Naval Station, Ingleside, TX 78362–5000

N68899 (MAJ00072)—LCW
Naval Reserve Intelligence Command, Bldg. 11, Naval Air Station, Dallas, TX 75211–9541

N68925—8J
Navy Public Works Center, Building 175, Washington Navy Yard, 901 M Street, SE, Washington, DC 20374–5041

N68939 (MAJ00012)—V8R
Naval Information Systems Management Center, Washington Navy Yard, Bldg 176-4, Washington, DC 20374–5070

N68944—4F, 4W, EW, 3E, KU, 3B
Naval Command, Control and Ocean Surveillance Center, ISE West Coast Division (NISE West), San Diego, CA 92186–5137

N70092, (MAJ00069)—8QJ–K, Q–R

Naval Security Station, 3801 Nebraska Avenue, NW, Washington, DC 20390–8230
N70240—M6
Commanding Officer, Naval Computer and Telecommunications Station, Naval Air Station, 937 N. Harbor Drive, San Diego, CA 92132
N70272—8G, ND, LQ
Naval Computer and Telecommunications Area, Master Station Atlantic, Norfolk, VA 23511–6898
N70273—V3
Naval Radio Station, Jim Creek, Oso, WA 98223
N70278—V4
Naval Computer and Telecommunications Station, (Yokosuka, Japan), Box 3, FPO AP 96349
N70283 (MAJ00069)—8QE
Commanding Officer, Code 30, Naval Security Group Activity, (Galeta Island, Canal Zone), FPO AA 34060–9998
N70294—8H
U.S. Naval Computer and Telecommunications Area, Master Station MED, (Naples, Italy), FPO AE 09620
N70310—N2
Naval Radio Station R, Sugar Grove, WV 26815.

PART 4—MARINE CORPS ACTIVITY ADDRESS NUMBERS

M00027—MS*, MU*, MS0–9
Headquarters, U.S. Marine Corps, Washington, DC 20380
M00146—MT
Marine Corps Air Station, Cherry Point, NC 28533
M00243—NE
Marine Corps Recruit Depot, San Diego, CA 92140
M00263—MX
Marine Corps Recruit Depot, Parris Island, SC 29905
M00264 (MAJ00027)—MUT
Marine Corps Combat Development Command, Marine Corps Air Facility, Quantico, VA 22134–5001
M00318
Marine Corps Air Station, Kaneohe Bay, Oahu, HI 96744
M00681—NG
Marine Corps Base, Camp Pendleton, Oceanside, CA 92054
M60050—MV
Marine Corps Air Station, El Toro, Santa Ana, CA 92709
M62204—MW
Marine Corps Logistics Base, Barstow, CA 92311
M62974—NA
Marine Corps Air Station, Yuma, AZ 85364
M67001—NB
Marine Corps Base, Camp Lejeune, NC 28542
M67004—NC
Marine Corps Logistics Base, Albany, GA 31704
M67011 (MAJ00027)—MSA
Director, 1st Marine Corps District, Garden City, Long Island, NY 11530
M67013 (MAJ00027)—MSC
Director, 4th Marine Corps District, Philadelphia, PA 19112–5072
M67015 (MAJ00027)—MSE
Director, 6th Marine Corps District, Atlanta, GA 30303
M67016 (MAJ00027)—MSG
Director, 8th Marine Corps District, New Orleans, LA 70113
M67017 (MAJ00027)—MSJ
Director, 9th Marine Corps District, Shawnee Mission, KA 66204
M67019 (MAJ00027)—MSL
Director, 12th Marine Corps District, San Francisco, CA 94130
M67021 (MAJ00027)—MUC
Marine Aircraft Wing 4, New Orleans, 4400 Dauphine Street, New Orleans, LA 70146–9125
M67025
Headquarters, Fleet Marine Force, Pacific, Pearl Harbor, HI 96860
M67029 (MAJ00027)—MSN
Marine Barracks, Washington, DC 20003
M67030 (MAJ00027)—MUP
Marine Corps Security Force Battalion Pacific NAVSTA Mare Island Vallejo, CA 94592–5022
M67290 (MAJ00027)—MSY
Marine Aviation Training Support Group-90, NATTC, NAS Memphis, Millington, TN 38054–5123
M67351
Marine Corps Security Force Company (London, UK) APO AE 09499
M67353 (MAJ00027)—MSQ
Headquarters Battalion, Marine Corps, Henderson Hall, Arlington, VA 22214
M67354
Post Supply Officer, Headquarters Marine Corps, Navy Annex, Arlington, VA 20380
M67355 (MAJ00027)—MUN
Landing Force Training Command Atlantic Naval Surface Force, U.S. Atlantic Fleet, Naval Amphibious Base, Little Creek, Norfolk, VA 23521–2350
M67385 (MAJ00027)—MU0–1
Camp H.M. Smith, U.S. Marine Corps, Halawa Heights, Oahu, Hawaii 96861
M67391—KY
Marine Corps Camp Det. (Camp Elmore), Norfolk, VA 23511
M67399—NF
Marine Corps Air-Ground Combat Center, Twentynine Palms, CA 92278
M67400—QJ
Marine Corps Procurement Office, Okinawa, Marine Corps Base, Camp Smedley D. Butler (Ryuku Island, Southern), FPO AP 96373
M67428—JA

Marine Corps Air Bases Western Area, MCAS El Toro, Santa Ana, CA 92709
M67443—LG
Defense Finance and Accounting Service, Kansas City Center, Kansas City, MO 64197
M67840 (MAJ00027)—MUV
USMC, Marine Corps Detachment, 1420 Hughes Avenue, Lackland Training Center, Lackland AF Base, TX 78236–5411
M67842—K6
East Coast Commissary Complex, Marine Corps Base, Camp LeJeune, NC 28542
M67853 (MAJ00027)—MUR
Marine Corps Security Force Battalion Atlantic, Naval Base, Norfolk, VA 23511–5697
M67854 (MAJ00027)—MU6–9
Marine Corps Systems Command, 2033 Barnett Ave, Suite 315, Quantico, VA 22134–5010
M68479 (MAJ00027)—MSU
4th Marine Division (Rein), FMF, USMCR, 4400, Dauphine Street, New Orleans, LA 70146–5400
M68522 (MAJ00027)—MSW
Marine Corps Reserve Support Center, Purchasing Department, 16950 El Monte, Overland Park, KS 66211–1408

PART 5—AIR FORCE ACTIVITY ADDRESS NUMBERS

F01600
5A
42 CONS/CC, 50 Lemay Plaza S, Bldg 804, Maxwell AFB, AL 36112–6334
F01620
6K
SSC/PK, 375 Libby Street, MAFB-Gunter Annex, AL 36114–6343
F02601
5C
355 CONS/CC, 3180 S. Craycroft Road, Davis-Monthan AFB, AZ 85707–3522
F02604
5D
56 CONS/CC, 14100 West Eagle St, Luke AFB, AZ 85309–1217
F03602
5F
314 CONS/CC, 642 Thomas Avenue, Little Rock AFB, AR 72099–5019
F04604
5G
93 CONS/CC, F St Bldg 708, Castle AFB, CA 95340–5320
F04605
5H
722 CONS, 1485 Graeber St, Ste 21, March AFB, CA 92518–1729
F04606
SM
SM–ALC/PK, Bldg 200, 3237 Peacekeeper Way, Ste 17, McClellan AFB, CA 95652–1060
F04611
QQ
AFFTC/PK, Bldg 2800, 5 S Wolfe Ave, Edwards AFB, CA 93524–1185
F04626
5M
60 CONS/LGC, 350 Hangar Avenue, Bldg 549, Travis AFB, CA 94535–2632
F04666
5N
9 CONS/CC, 6500 B St, Ste 101, Beale AFB, CA 95903–1712
F04684
QW
30 CONS/LGC, 806 13th St, Ste D, Bldg 7015 Sect 2c, Vandenberg AFB, CA 93437–5226
F04689
RN
750 LSS/LGC, 1080 Lockheed Way, Box 039, Onizuka AFB, CA 94089–1234
F04690
RF
Det 2, SMC/PK, 1080 Lockheed Way Box 043, Onizuka AFB, CA 94089–1235
F04693
MG
SMC/PKD, 400 N Douglas Blvd Ste 212E, Los Angeles, CA 90245–4640
F04699
Q5
SM–ALC/PK, Bldg 200 3227 Peacekeeper Way Ste 17, McClellan AFB, CA 95652–1060
F04700
Q2
AFFTC/PKA, 5 S Wolfe Ave, Building 2800, Edwards AFB, CA 93524–1185
F04071
TB
SMC/PK, 155 Discovery Blvd Ste 1516, Los Angeles, CA 90245–4692
F04704
R9
Det 10 SMC/PK, Bldg 951, 1111 E. Mill St Rm 104, San Bernardino, CA 92408–1621
F05603
HQ AFSPC/LGC, 150 Vandenberg Street Ste 1105, Peterson AFB, CO 80914–4350
F05604
SX
21 CONS/LGC, 700 Suffolk Street, Peterson AFB, CO 80914–1200
F05611
5Q
10 ABW/LGC, 8110 Industrial Drive Ste 200, USAF Academy, CO 80840–2315
F07603
5R
436 CONS/LGC, 639 Atlantic Street Ste 243, Dover AFB, DE 19902–5639
F08602
5S
56 CONS/CC, 3014 Zemke Avenue, MacDill AFB, FL 33621–5000
F08620
5T
16 CONS/LGC, P.O. Box 9190, 350 Tully Street, Hurlburt Field, FL 32544–5825
F08626
QU

OL/PK ASC/PK, 205 West D Ave, Ste 433, Bldg 350, Eglin AFB, FL 32542–6864
F08630
S1
OL–MNK ASC/MNK, 101 W Eglin Blvd, Ste 337, Bldg 13, Eglin AFB, FL 32542–6810
F08635
RH
AFDTC/PK, Bldg 350, 205 West D Avenue Ste 433, Eglin AFB, FL 32542–6864
F08637
5V
325 CONS/CC, 501 Illinois Ave Ste 5, Tyndall AFB, FL 32403–5526
F08650
TJ
45 CONS/PKESM, 1201 Minuteman Street, Patrick AFB, FL 32925–5432
F08651
Q3
AFDTC/PKO, 205 West D Ave Ste 541, Eglin AFB, FL 32542–6862
F09603
RJ, RR
WR–ALC/PK, Bldg 300, 215 Byron Street, Robins AFB, GA 31098–1611
F09604
RU
Det 8, 2762 LS(SP)/PK, 750 3rd St, Bldg 350, Robins AFB, GA 31098–2122
F09607
5W
347 CONS/CC, 4380B Alabama Rd, Moody AFB, GA 31699–1793
F09609
5X
94 LG/LGC, 1538 Atlanta Ave Ste 104, Dobbins AFB, GA 30069–4824
F09634
5Y
HQ AFRES/LGC, 155 2nd St, Robins AFB, GA 31098–1638
F09650
Q6
WR–ALC/PKO, Bldg 300, 215 Byron Street, Robins AFB, GA 31098–1803
F10603
5Z
366 CONS/CC, 366 Gunfighter Ave Ste 498, Mountain Home AFB, ID 83648–4037
F11603
6B
928 AW/LGC, 6626 N. Patton Rd Ste 94, Chicago O'Hare IAP, IL 60666–5023
F11623
6C
375 CONS/LGC, 102 E Martin Street Ste 216, Scott AFB, IL 62225–5015
F11624
X4
CSPO/CGZ, 3205 East Drive, Scott AFB, IL 62225–5425
F11626
HQ AMC/DOKR, 402 Scott Dr Unit 3A1, Scott AFB, IL 62225–5302
F12617
6D
434 LSS/LGC, 2 Kittyhawk St, Grissom ARB, IN 46971–5320
F14614
6E
22 CONS/LGC, 53147 Kansas St Ste 102, McConnell AFB, KS 67221–3606
F16602
6G
2 CONS/CC, 841 Fairchild Ave., Barksdale AFB, LA 71110
F19617
R5
439 LSS/LGC, 100 Logistics Dr, 2nd Floor Ste 200, Westover ARB, MA 01022–1531
F19628
RS
ESC/PK, Bldg 1520, 104 Barksdale Street, Hanscom AFB, MA 01731–1806
F19650
SH
ESC/PKO, Bldg 1520, 104 Barksdale Street, Hanscom AFB, MA 01731–2816
F20613
6L
410 CONS/CC, 417 A Ave Ste 112, Sawyer AFB, MI 49843–3299
F21611
6N
934 LG/LGC, 760 Military Hwy, Minneapolis, MN 55450
F22600
RC
81 CONS/CC, 200 Fifth St Ste 101, Keesler AFB, MS 39534–2102
F22608
6Q
14 CONS/CC, 555 Seventh Street Ste 113, Columbus AFB, MS 39701–1006
F23606
6R
509 CONS/CC, 850 Arnold Ave Bldg 705, Whiteman AFB, MO 65305–5021
F24604
6T
341 CONS/LGC, 7015 Goddard Dr, Malmstrom AFB, MT 59402–6863
F25600
6U
55 CONS/CC, MBB 09 106 Peacekeeper Dr Ste 2N3, Offutt AFB, NE 68113–5320
F26600
S4
554 CONS/CC 5865 Swabb Blvd, Nellis AFB, NV 89191–7063
F28609
6V
305 CONS/LGC, 3563 Lancaster Ave, McGuire AFB, NJ 08641–2712
F28620
M1
65 CONS/CC, APO AE 09720–7775
F28620
S8
65 CONS/O1–A, PO Box 837, Wrightstown, NJ 05862–0837
F29601
RW

PL/PK, Bldg 499, 3651 Lowry Ave SE Rm 222, Phillips Laboratory, Kirtland AFB, NM 87117–5777
F29605
6W
27 CONS/CC, 100 North Torch Blvd, Cannon AFB, NM 88103–5320
F29650
R3
PL/PKO, 3651 Lowry Ave SE Rm 117, Kirtland AFB, NM 87117–5777
F29651
6X
49 CONS/CC, PO Drawer S, Holloman AFB, NM 88330–1601
F30602
RX
RL/PK, Bldg 106, 26 Electronic Pky, Griffiss AFB, NY 13441–4514
F30617
6Y
914 AW/LGC, 2720 Kirkbridge Drive, Niagara Falls IAP–ARS, NY 14304–5320
F30635
S3
416 CONS/CC, 375 Brooks Road, Griffiss AFB, NY 13440
F30636
6Z
380 CONS/LGC, 11 Ohio Avenue, Plattsburgh AFB, NY 12903–3506
F31601
BU
23 CONS/CC, 1443 Reilly Rd Ste C, Pope AFB, NC 28308–2896
F31610
BW
4 CONS/CC, 1695 Wright Ave, Seymour Johnson AFB, NY 27531–2459
F32604
BX
5 CONS/CC, 211 Missile Ave, Minot AFB, ND 58705–5027
F32605
BY
319 CONS/CC, 575 6th Ave, Grand Forks AFB, ND 58205–6436
F33600
RZ
ASC/PKW, 1940 Allbrook Dr Ste 3, Bldg 1, Wright Patterson AFB, OH 45433–5309
F33601
Q7
ASC/PKWO, 1940 Allbrook Dr Ste 3, Bldg 1, Wright Patterson AFB, OH 45433–5309
F33615
SG
WL/PK, Bldg 7, 2530 C Street, Wright Patterson AFB, OH 45433–7607
F33630
C1
910 AW/LGC, 3976 King Graves Rd, Youngstown-Warren Rgl Arpt, Youngstown ARP, OH 44473–0910
F33657
SC
ASD/PK, Bldg 14, 1865 Fourth St Ste 6, Wright Patterson AFB, OH 45433–7120
F33659
Q8
AGMC/PK, Bldg 2, 813 Irving Wick Dr West, Newark AFB, OH 43055–0027
F33660
TA
AGMC/PKY, Bldg 2, 813 Irving Wick Drive/W, Newark AFB, OH 43057–0027
F34600
C2
71 FTW/CVC, 246 Brown Pkwy Ste 228, Vance AFB, OK 73705–5037
F34601
SD
OC–ALC/PK, 3001 Staff Dr Ste 1AG76A, Tinker AFB, OK 73145–3015
F34608
TF
CSC/PK, 4009 Hilltop Rd, Ste 103, Tinker AFB, OK 73145–2713
F34612
C3
97 CONS/CC, 205 South 6th St Bldg 318, Altus AFB, OK 73523–5147
F34650
Q9
OC–ALC/PKO, Bldg 3 7858 Fifth St Ste 1, Tinker AFB, OK 73145–3015
F36629
C7
911 AW/LGC, 316 Defense Ave Ste 101, Corapolis, PA, Pittsburgh IAP–ARS PA 15108–4403
F36700
C8
913 AW/LGC, 1051 Fairchild Street, Willow Grove ARS, PA 19090–5203
F38601
C9
20 CONS/CC, 305 Blue Jay St, Shaw AFB, SC 29152–5320
F38604
T3
USCENTAF, Bldg 1132, Shaw AFB, SC 29152
F38610
CR
437 CONS/LGC, 102 Long Street, Charleston AFB, SC 29404–4829
F39601
CT
28 CONS/CC, 2704 George Dr, Ellsworth AFB, SD 57706–5320
F40600
Q4
AEDC/PK, Bldg 100, 100 Kindel Dr Ste 1335, Arnold AFB, TN 37389–1335
F40650
D1
AEDC/PKP, Bldg 100, 100 Kindel Dr Ste 1332, Arnold AFB, TN 37389–1332
F41608
SA
SA–ALC/PK, Bldg 43, 143 Billy Mitchell Rd, Kelly AFB, TX 78241–6014

F41612
D4
82 CONS/CC, 136 K Avenue Ste 2, Sheppard AFB, TX 76311–2739
F41614
E2
17 CONS/CC, 210 Scherz Boulevard, Goodfellow AFB, TX 76908–4705
F41620
E3
64 CONS/CC, 300 Reese Blvd Ste 7, Reese AFB, TX 79489–5032
F41622
QY
HSC/PKO, Bldg 625, 8005 9th St, Brooks AFB, TX 78235–5353
F41624
TG
HSC/PK, Bldg 626, 8005 9th St, Brooks AFB, TX 78235–5353
F41636
ZV
37 CONS/CC, 1655 Selfridge Avenue, Lackland AFB, TX 78236–5253
F41650
YA
SA–ALC/PKO, Bldg 1598, 1288 Growden Rd, Kelly AFB, TX 78251–5318
F41652
E5
7 CONS/CC, 381 3rd St, Dyess AFB, TX 79607–5320
F41685
E6
47 CONS/CC, 171 Alabama Ave, Laughlin AFB, TX 78843–5102
F41689
SK
AETC CONS/CC, 550 D Street Ste 07, Randolph AFB, TX 78150–4434
F41691
Y0
12 CONS/CC, 395 B Street West Ste 02, Randolph AFB, TX 78150–4525
F42600
QP
OO–ALC/PK, Bldg 1289, 6038 Aspen Ave, Hill AFB, UT 84056–5805
F42610
QP
OO–ALC/LMK, Bldg 1258, 6014 Dogwood Ave, Hill AFB, UT 84056–5821
F42620
QP
OO–ALC/LAK, Bldg 1233, 6072 Fir Avenue, Hill AFB, UT 84056–5820
F42630
QP
OO–ALC/LIK, Bldg 1215, 6050 Gum Lane, Hill AFB, UT 84056–5825
F42650
R2
OO–ALC/PKO, Bldg 1289 NE 6038 Aspen Ave, Hill AFB, UT 84056–5805
F44600
F3
1 CONS/CC, 74 Nealy Ave Ste 109, Langley AFB, VA 23665–2088
F44650
Q1
ACC CONS, 227 Harding Ave Ste 302, Langley AFB, VA 23665
F45603
F5
62 CONS/LGC, 100 Main Street Ste 1049, McChord AFB, WA 98438–1109
F45613
F8
92 CONS/LGC, 110 W Ent St Ste 200, Fairchild AFB, WA 99011–9403
F47606
G7
440 AW/LGC, 300 East College Avenue, Gen. Mitchell IAP–ARS, WI 53207–6299
F48608
G9
90 CONS/LGC, 7505 Marne Loop, F.E. Warren AFB, WY 82005–2860
F49620
SE
AFOSR/PK, Bldg 410, 110 Duncan Ave Ste B115, Bolling AFB, DC 20332–0001
F49642
J1
11 CONS/LGC, 3534 Ohio Dr, Andrews AFB, MD 20331–5152
F61101
T1
Det 1, 21 CONS/CC, APO AE 09710–5000
F61211
N9
31 FW/LGC, Unit 6102, Box 140, Aviano AB APO AE 09601–2140
F61354
W8
741 ABS/LGC, Unit 6870, Box 85, Izmir AB APO AE 09821–7085
F61358
W9
39 CONS/LGC, Unit 730, Box 285, Incirlik AB APO AE 09824–0285
F61503
UC
435 AW/LGC, Unit 7420 Box 115, Rhein Main AB APO AE 09097–0115
F61517
UF
52 CON FLT/LGC, Unit 3910, Bldg 2001, Spangdahlem AB APO AE 09137–3910
F61521
UH, UJ
USAFE CONS/LGC, Unit 3115, Ramstein AB AE 09094–3115
F61708
UK
603 CS/CON, Unit 5500, Bldg 202, RAF Croughton APO AE 09494–5500
F61730
UQ
OL–C 10 LG/LGC, Unit 5720, RAF Upwood APO AE 09470–5720
F61775
UV

48 CONS/LGC, Unit 5070, Box 270, RAF Feltwell APO AE 09461–0270
F61815
UW
496 ABS/LGC, Unit 6585, Moron AB APO AE 09643–6585
F62032
4D
USMTM, Unit 61300 Box 2, APO AE 05862–0837
F62321
RA
18 CONS/LGC, Unit 5199, Kadena AB APO AP 96368–5199
F62509
QZ
35 CONS, Unit 5201, Misawa AB APO AP 96319–5201
F62562
SW
374 CONS/LGC, Unit 5228, Yokota AB AP 96328–5228
F64133
S9
36 CONS/CC, Unit 14040, Anderson AFB APO AP 96543–4040
F64605
TN
15 CONS/LGC, 90 G Street, Hickam AFB, HI 96853–5230
F65501
WF
3 CONS/CC, 6920 12th Street Ste 242, Elmendorf AFB, AK 99506–2570
F65503
WH
354 CONS/LGC, 3112 Broadway Avenue Ste 3, Eielson AFB, AK 99702–1850
F66501
R7
24 CONS/CC, Unit 0550, Howard AFB APO AA 34001–0550
FA0021
HQ AFSOC/LGCX, 100 Bartley St, Hurlburt Field, FL 32544–5273
FA2550
50 LSS/LGC, 300 O'Malley Avenue, Suite 30, Falcom AFB, CO 80912–3030
FA4416
5J
89 CONS/LGC, 1419 Menoher Dr, Andrews AFB, MD 20331–5000
FA4452
RL
AMCCONF/LGCF, 102 E. Martin St., Rm 216, Scott AFB, IL 62225–5015
FA6648
5U
482 LSSQ/LGC, 360 Coral Sea Blvd Rm 112, Homestead ARB, FL 33039–1299
FA6652
E9
924 FW/LGC, PO Box 1460, Del Valle, TX 78617–1460
FA6675
D5
301 LG/LGC, 1710 Burke Ave., NAS Joint Reserve Base, Fort Worth, TX 76127–6200

PART 6—DEFENSE LOGISTICS AGENCY ACTIVITY ADDRESS NUMBERS

SP0100
TW
Defense Personnel Support Center, Directorate of Clothing and Textiles, 2800 South 20th Street, Philadelphia, PA 19109–8419
SP0103
W7
Defense Personnel Support Center, Installation Support, 2800 South 20th Street, Philadelphia, PA 19109–8419
SP0200
TX
Defense Personnel Support Center, Directorate of Medical Materiel, 2800 South 20th Street, Philadelphia, PA 19101–8419
SP0300
UE
Defense Personnel Support Center, Directorate of Subsistence, 2800 South 20th Street, Philadelphia, PA 19101–8419
SP0302
W6
Defense Subsistence Region Pacific, ATTN: DSR–Pacific, 2155 Mariner Square Loop, Alameda, CA 94501–1022
SP0303
U6
Defense Subsistence Region Europe, DSR Europe, APO AE 09052
SP0400
TY
Defense General Supply Center, Business Operations, 8000 Jefferson Davis Highway, Richmond, VA 23297–5770
SP0410
XH
Defense General Supply Center, Base Spt Div, Dir of Spec Proc, 8000 Jefferson Davis Highway, Richmond, VA 23297–5312
SP0411
TY
Defense General Supply Center, Proc Br (ESOC), Customer Asst Ctr, 8000 Jefferson Davis Highway, Richmond, VA 23297–5871
SP0413
TY
Defense General Supply Center, Spec Purchase Br, Prod Ctr Spt Div, 8000 Jefferson Davis Highway, Richmond, VA 23297–5864
SP0414
TY
Defense General Supply Center, SASPS Phase I Br, Prod Ctr Spt Div, 8000 Jefferson Davis Highway, Richmond, VA 23297–5863
SP0420
XK
Defense General Supply Center, DODDS Div., Dir Of Spec Proc, 8000 Jefferson Davis Highway, Richmond, VA 23297–5313

SP0430
TY
Defense General Supply Center, Proc Br, Product Center 5, 8000 Jefferson Davis Highway, Richmond, VA 23297–5813
SP0440
TY
Defense General Supply Center, Proc Br, Product Center 7, 8000 Jefferson Davis Highway, Richmond, VA 23297–5834
SP0441
TY
Defense General Supply Center, Proc Br, Product Center 6, 8000 Jefferson Davis Highway, Richmond, VA 23297–5822
SP0450
TY
Defense General Supply Center, Proc Br, Product Center 4, 8000 Jefferson Davis Highway, Richmond, VA 23297–5800
SP0451
TY
Defense General Supply Center, Proc Br, Product Center 2, 8000 Jefferson Davis Highway, Richmond, VA 23297–5772
SP0460
TY
Defense General Supply Center, Proc Br, Product Center 1, 8000 Jefferson Davis Highway, Richmond, VA 23297–5772
SP0461
TY
Defense General Supply Center, Special Purchase Branch (SPUR), 8000 Jefferson Davis Highway, Richmond, VA 23297–5864
SP0490
TY
Defense General Supply Center, Proc Br, Product Center 1, 8000 Jefferson Davis Highway, Richmond, VA 23297–5846
SP0499
Defense General Supply Center—FCIM, 8000 Jefferson Davis Highway, Richmond, VA 23297–5000
SP0500
TZ
Defense Industrial Supply Center, 700 Robbins Avenue, Philadelphia, PA 19111–5096
SP0510
W2
Defense Industrial Supply Center, Base Operating Support System, 700 Robbins Avenue, Philadelphia, PA 19111–5096
SP0520
Defense Industrial Supply Center, Product Verification Testing Acquisition, 700 Robbins Avenue, Philadelphia, PA 19111–5096
SP0599
Defense Industrial Supply Center—FCIM, 700 Robbins Avenue, Philadelphia, PA 19111–5096
SP0600
UA
Defense Fuel Supply Center, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22304–6160
SP0700
UB
Defense Construction Supply Center, P.O. Box 3990, Columbus, OH 43216–3990
SP0701
Defense Construction Supply Center, Directorate of Contracting and Production, ATTN: DDCO TTC, Bldg 122, Columbus, OH 43216–5000
SP0710
YL
Defense Construction Supply Center, Commercial Activities and Service Branch, P.O. Box 16704, Columbus, OH 43216–5010
SP0720
YM
Defense Construction Supply Center, Wood Products Branch, P.O. Box 16704, Columbus, OH 43216–5010
SP0730
WZ
Defense Construction Supply Center, Military Interdepartmental PR MIPR Division, P.O. Box 3990, Columbus, OH 43216–5000
SP0740
XJ
Defense Construction Supply Center, High Demand Group (MINI–ICP), P.O. Box 3990, Columbus, OH 43216–5000
SP0750
UB
Defense Construction Supply Center, Contracts Division I, P.O. Box 16704, Columbus, OH 43216–5010
SP0760
UB
Defense Construction Supply Center, Contracts Division II, P.O. Box 16704, Columbus, OH 43216–5010
SP0770
UB
Defense Construction Supply Center, Contracts Division III, P.O. Box 16704, Columbus, OH 43216–5010
SP0780
Defense Construction Supply Center, Government Furnished Property Acct, P.O. Box 16704, Columbus, OH 43216–5000
SP0799
Defense Construction Supply Center—FCIM, P.O. Box 3990, Columbus, OH 43216–5000
SP0833
VS
Defense National Stockpile Center, 8725 John J. Kingman Road, Suite 3339, Fort Belvoir, VA 22060–6223
SP0834
VT
Defense National Stockpile Center, Zone 1—Management Office, Room 19–116, 26 Federal Plaza, New York, NY 10278–5000
SP0835
VU

Defense National Stockpile Center, Zone 2—Management Office, 3200 Sheffield Avenue, Hammond, IN 46327–5000
SP0836
VY
Defense National Stockpile Center, Zone 3—Management Office, 819 Taylor Street, Fort Worth, TX 76102–5000
SP0900
UD
Defense Electronics Supply Center, 1507 Wilmington Pike, Dayton, OH 45444–5000
SP0905
Defense Electronics Supply Center, Passive Devices Division, 1507 Wilmington Pike, Dayton, OH 45444–5198
SP0910
U7
Defense Electronics Supply Center, Base Contracting Section, 1507 Wilmington Pike, Dayton, OH 45444–5000
SP0920
W4
Defense Electronics Supply Center, 1507 Wilmington Pike, Dayton, OH 45444–5198
SP0930
Defense Electronics Supply Center, Switches Division, 1507 Wilmington Pike, Dayton, OH 45444–5198
SP0935
Defense Electronics Supply Center, Connectors Division, 1507 Wilmington Pike, Dayton, OH 45444–5198
SP0960
Defense Electronics Supply Center, Active Devices Division, 1507 Wilmington Pike, Dayton, OH 45444–5198
SP0970
Defense Electronics Supply Center, ADP/Communications Division, Dayton, OH 45444–5198
SP0980
Defense Electronics Supply Center, Tailored Logistics Acquisitions, 1507 Wilmington Pike, Dayton, OH 45444–5198
SP0999
Defense Electronics Supply Center—FCIM, 1507 Wilmington Pike, Dayton, OH 45444–5160
SP3100
WX
Defense Distribution Region East (DDRE), Office of Contracting, New Cumberland, PA 17070–5001
SP3200
TV
Defense Distribution Region West (DDRW), Office of Contracting, Building S–4, Lathrop, CA 95330–5000
SP3500
UN
Defense Distribution Region East (DDRE), Office of Contracting, New Cumberland, PA 17070–5001
SP4400
X1
Defense Reutilization Marketing Service, Federal Center, 74 Washington Avenue North, Battle Creek, MI 49017–3092
SP4410
X1
Defense Reutilization Marketing Service, Special Contracts Division, ATTN: DRMS–PP, Federal Center, 74 Washington Avenue North, Battle Creek, MI 49017–3092
SP4700
YK
Defense Logistics Agency, ADP Telecommunications Contracting Office, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221
SP4800
Defense Logistics Agency, Office of Small and Disadvantaged Business Utilization, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221
SBL00A
MJ
DCMAO Brussels/Emb, PSC 82, Box 002, APO AE 09724
SCN01A
WV
DCMAO Canada, 275 Bank Street, Suite 200, Ottawa, ON Canada K2P
SGR18A
DCMAO Frankfurt, CMR 410, Box 761, APO AP 09096
SJP10A
Y9
DCMAO 6TSUGI Japan, PSC 477, Box 39, APO AP 96306–2739
SKR08A
R1
DCMAO Korea, Unit 2000, APO AE 96214–5000
SM104A
XC
DCMAO Kuala Lumpur, American Embassy, APO AP 96535–5000
SPH07A
DCMAOR Manila, APO CA, San Francisco, CA 96440
SPR01A
QF
DCMAO Puerto Rico, P.O. Box DLA (NSGA), FPO AA 34053–0007
SPR02A
DCMAOR Alverca, Alverca Portugal, APO PO 09726
SSR01A
YE
DCMAO Israel, Unit 228, APO AE 09830–7228
STR02A
TQ
DCMAO Ankara, Unit 9050, APO AE 09822–9050
SUK12A
VN
DCMAO United Kingdom, Unit 4790, APO AE 09449–4790
S0102A
WA

DPRO Pemco Aeroplex, Inc., P.O. Box 12447, Birmingham, AL 35202–2447
S0302A
WY
DCMAO Phoenix, The Monroe School, 215 North 7th Street, Phoenix, AZ 85034–1012
S0304A
TR
DPRO McDonnell Douglas Helicopter, 5000 East McDowell Road, Mesa, AZ 85025–9797
S0305A
SR
DPRO Hughes, Tucson, P.O. Box 1137 M/S E–4, Tucson, AZ 85734–1337
S0506A
WL
DCMD West, 222 North Sepulveda Boulevard, El Segundo, CA 90245–4320
S0507A
XR
DCMAO San Francisco, 1250 Bayhill Drive, San Bruno, CA 94066–3070
S0512A
YC
DCMAO Van Nuys, 6230 Van Nuys Boulevard, Van Nuys, CA 91401–2713
S0513A
UG
DCMAO Santa Ana, 34 Civic Center Plaza, P.O. Box C 12700, Santa Ana, CA 92712–2700
S0514A
VH
DCMAO San Diego, 7675 Dagget Street, Suite 200, San Diego, CA 92111–2241
S0520A
VR
DPRO United Defense, California, 1125 Coleman Avenue, P.O. Box 367, San Jose, CA 95103–0367
S0523A
YG
DPRO Westinghouse, 401 East Hendy Avenue, P.O. Box 3499, M/S 11–7, Sunnyvale, CA 94088–3499
S0530A
X9
DPRO McDonnell Douglas, Space Systems Company, 5301 Bolsa Avenue, Huntington Beach, CA 92647–2048
S0533A
XG
DPRO Hughes, Fullerton, 1901 West Malvern Street, P.O. Box 3310, Fullerton, CA 92634–3310
S0539A
QT
DPRO Hughes, Los Angeles, P.O. Box 92463, Los Angeles, CA 90009–2463
S0540A
RB
DPRO Rockwell, Anaheim, 3370 Miraloma Avenue, M/S AB02A, Anaheim, CA 92803–3110
S0542A
RY
DPRO Rockwell, Canoga Park, 6633 Canoga Avenue, Canoga Park, CA 91303–2790
S0543A
QX
DPRO Lockheed, Sunnyvale, P.O. Box 3504, Sunnyvale, CA 94088–3504
S0544A
TC
DPRO Douglas, Long Beach, 3855 Lakewood Boulevard, Long Beach, CA 90846–0001
S0545A
S6
DPRO TRW, Redondo Beach, One Space Park, Redondo Beach, CA 90278–1078
S0546A
QR
DPRO Northrop, Hawthorne, One Northrop Avenue, Hawthorne, CA 90250–3296
S0602A
VK
DCMAO Denver, Orchard Place 2, Suite 200, 5975 Greenwood Plaza Boulevard, Englewood, CO 80111–4715
S0605A
RE
DPRO Martin Marietta, Denver, P.O. Box 179, Denver, CO 80201–0179
S0701A
WB
DCMAO Hartford, 130 Darlin Street, East Hartford, CT 06108–3234
S0702A
UP
DCMAO Stratford, 555 Main Street, Stratford, CT 06497–7593
S0703A
XT
DPRO Hamilton Standard, 1 Hamilton Road, Windsor Locks, CT 06096–0463
S0707A
LF
DPRO UTC Sikorsky Aircraft Division, Stratford, CT 06497–7553
S0708A
T5
DPRO Pratt & Whitney, East Hartford, 400 Main Street, East Hartford, CT 06108–0969
S1002A
WW
DCMAO Orlando, 3555 Maguire Boulevard, Orlando, FL 32803–3726
S1005A
XL
DPRO Martin Marietta, Orlando, 5600 Sand Lake Road, MP49, Orlando, FL 32819–8907
S1009A
V1
DPRO Harris, Melbourne, 1425 Troutman Boulevard, NE, Palm Bay, FL 32905–4102
S1011A
T2
DPRO Pratt & Whitney, West Palm Beach, P.O. Box 109600, West Palm Beach, FL 33410–9600
S1102A
UL

DCMD South, 805 Walker Street, Marietta, GA 30060–2789
S1103A
Y1
DCMAO Atlanta, 805 Walker Street, Marietta, GA 30060–2789
S1109A
Z4
DCMAO Clearwater, 1100 Cleveland Street, Suite 200, Clearwater, FL 34615–4822
S1110A
Z5
DPRO Grumman, St. Augustine, 5000 US Highway 1, North, P.O. Drawer 3447, St. Augustine, FL 32085–3447
S1111A
RK
DPRO Lockheed Aeronautical Systems Co.—Georgia, 86 South Cobb Drive, Bldg B–2, Marietta, GA 30063–0260
S1201A
Z9
DCMAO Residency, Honolulu, Box 64110, Camp HM Smith, Honolulu, HI 96861–4110
S1211A
U8
DCMC Aircraft Program Management Office, 805 Walker Street, Marietta, GA 30060–2789
S1221A
X5
DPRO Grumman, P.O. Box 9650, Melbourne, FL 32902–9650
S1403A
YP
DCMAO Chicago, O'Hare International Airport, P.O. Box 66911, Chicago, IL 60666–0911
S1501A
WG
DCMAO Indianapolis, Building 1, Fort Benjamin Harris, IN 46249–5701
S1505A
X2
DPRO Magnavox, 1616 Directors Row, Fort Wayne, IN 46808–1286
S1701A
YD
DCMAO Wichita, U.S. Courthouse, Suite B–34, 401 North Market, Wichita, KS 67202–2095
S1702A
RP
DPRO Boeing Military Airplanes, P.O. Box 7723, Wichita, KS 67277–7723
S1903A
DPRO Michoud, 13800 Old Gentilly Hwy, Building 350, P.O. Box 29503, New Orleans, LA 70189–0503
S2102A
7H
Defense Contract Management Residency, 895 Oceanic Drive, P.O. Box 1488, Annapolis, MD 21401–1488
S2103A
S2
DPRO Westinghouse Electric—Baltimore, P.O. Box 1693, M/S 1265, Baltimore, MD 21203–1693
S2202A
UT
DCMD Northeast, 495 Summer Street, Boston, MA 02210–2184
S2203A
XX
DPRO GTE Government Systems Corp, 200 First Avenue, Needham, MA 02194–9123
S2205A
XF
DPRO Raytheon, Spencer Laboratory, Wayside Avenue, Burlington, MA 01803–0901
S2206A
Y3
DCMAO Boston, 495 Summer Street Boston, MA 02210–2138
S2207A
7Q
DPRO GE Aircraft Engines, Lynn, 1000 Western Avenue, Lynn, MA 01910–0445
S2208A
NJ
DPRO Martin Marietta Defense Systems, 100 Plastics Avenue, Pittsfield, MA 01201–3696
S2209A
SQ
DPRO Textron Defense Systems, 201 Lowell Street, Wilmington, MA 01887–2941
S2303A
VW
DCMAO Grand Rapids, Riverview Center Building, 678 Front Street, NW, Grand Rapids, MI 49504–5352
S2305A
Y7
DCMAO Detroit, McNamara Federal Building, 477 Michigan Avenue, Detroit, MI 48226–2579
S2401A
WQ
DCMAO Twin Cities, 2305 Ford Parkway, St. Paul, MN 55116–1893
S2402A
WD
DPRO Honeywell/Alliant Techsystems, Honeywell Plaza, 2701 4th Avenue, South Minneapolis, MN 54408–1792
S2404A
UR
DCMAO Baltimore, 200 Towsontown Boulevard, West, Towson, MD 21204–5299
S2603A
XS
DCMAO St Louis, 1222 Spruce Street, St. Louis, MO 63103–2811
S2606A
JZ
DPRO McDonnell Douglas, St. Louis, P.O. Box 516, St. Louis, MO 63166–0516
S3001A
YS

DPRO Lockheed Sanders, Inc., Daniel Webster Highway, South, P.O. Box 868, Nashua, NH 03061–0868
S3101A
WT
DCMAO Springfield, 955 South Springfield Avenue, Springfield, NJ 07081–3170
S3102A
UU
DPRO Allied Signal, Route 46, Teterboro, NJ 07608–1173
S3109A
WC
DPRO GEC/Kearfott, 164 Totowa Road, MS 11A30, Wayne, NJ 07474–0975
S3110A
X7
DPRO GE Aerospace, Marne Highway and Borton Landing Road, Moorestown, NJ 08057–3095
S3304A
XQ
DPRO Link Flight Simulation, Kirkwood Plant, P.O. Box 1237, Binghamton, NY 13902–1237
S3306A
XU
DCMAO Syracuse, 615 Erie Boulevard West, Syracuse, NY 13204–2408
S3309A
VX
DCMAO Garden City, 605 Stewart Avenue, Garden City, NY 11530–4761
S3314A
YN
DPRO Harris, 6801 Jericho Turnpike, Syosset, NY 11791–4465
S3315A
YR
DPRO IBM, Route 17C, Owego, NY 13827–1298
S3316A
KK
DPRO Grumman Aerospace, Bethpage, Bethpage, NY 11714–3593
S3317A
NH
DPRO Unisys, Great Neck, Long Island, Great Neck, NY 11020–7001
S3602A
SB
DPRO GE Aircraft Engines, Evendale, Mail Drop N–1, Cincinnati, OH 45215–6303
S3603A
VB
DCMAO Cleveland, A J Celebrezze Federal Building, 1240 East Ninth Street, Cleveland, OH 44199–2063
S3605A
VL
DCMAO Dayton, Gentile Station, 1001 Hamilton Street, Dayton, OH 45444–5300
S3613A
YB
DPRO Westinghouse, Cleveland, 18901 Euclid Avenue, Cleveland, OH 44117–1388
S3615A
YH
DPRO Williams International, c/o Williams International Corporation, 2280 West Maple Road, Walled Lake, MI 48088–0200
S3616A
X6
DPRO Loral, 1210 Massillon Road, Akron, OH 44315–0001
S3618A
YF
DPRO General Dynamics, Lima, 1155 Buckeye Road, Lima, OH 45804–1898
S3620A
VA
Defense Contract Management Command, International Contracts Division, 2000 Hamilton Street, Dayton, OH 45444–5410
S3910A
XA
DCMD Mid-Atlantic, P.O. Box 7478, Philadelphia, PA 19101–7478
S3911A
XD
DCMAO Pittsburgh, 1612 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222–4190
S3912A
XM
DCMAO Reading, 45 South Front Street, Reading, PA 19602–1094
S3915A
X3
DCMAO Philadelphia, P.O. Box 7699, Philadelphia, PA 19101–7699
S3916A
TU
DPRO Boeing Helicopters, P.O. Box 16859, Philadelphia, PA 19142–0859
S4201A
XY
DPRO United Defense L.P., P.O. Box 15512, York, PA 17405–1512
S4402A
Z7
DCMAO Dallas, 1200 Main Street, Dallas, TX 75202–4399
S4404A
XN
DCMAO San Antonio, 615 East Houston, P.O. Box 1040, San Antonio, TX 78294–1040
S4407A
WN
DPRO E-Systems, Inc., P.O. Box 6379, Greenville, TX 75403–6379
S4408A
XZ
DPRO Texas Instruments, Inc., P.O. Box 660246, MS 256, Dallas, TX 75266–0246
S4418A
W1
DPRO Bell Helicopter Textron, P.O. Box 1605, Fort Worth, TX 76101–1605
S4419A
SL
TH

DPRO Lockheed, Fort Worth, P.O. Box 371, Fort Worth, TX 76101–0371
S4420A
WP
DPRO Loral/Vought Systems, P.O. Box 655907, M/S 4915, Dallas, TX 75265–5907
S4503A
R6
DPRO Thiokol, P.O. Box 524, Mail Stop Z–10, Brigham City, UT 84302–0524
S4801A
XW
DCMAO Seattle, Building 5D, Naval Station Puget Sound, Seattle, WA 98115–5010
S4804A
SP
DPRO Boeing, Seattle, P.O. Box 3707, Seattle, WA 98124–2207
S4807A
WM
DPRO, Stewart and Stevenson, Inc., 5000 Interstate 10 West, P.O. Box 457, Sealy, TX 77474–0457
S4804A
SP
DPRO Boeing, Seattle, P.O. Box 3707, Seattle, WA 98124–2207
S4807A
WM
DPRO, Stewart and Stevenson, Inc., 5000 Interstate 10 West, P.O. Box 457, Sealy, TX 77474–0457

PART 7—DEFENSE INFORMATION SYSTEMS AGENCY ACTIVITY ADDRESS NUMBERS

DCA100, VC DITCO–NCR, Attn: DTN, 701 South Courthouse Road, Arlington, VA 22204–2109 (ZD10)
DCA200, VP Defense Information Technology Contracting Organization, Contracting Directorate, Attn: DTS, 2300 East Drive, Scott AFB, IL 62225–5406 (ZD11)
DCA300, 1F DITCO-Pacific, Attn: DTP, Building 487, Box 300, Vincennes Avenue and North Road, Pearl Harbor, HI 96860–5300 (ZD13)
DCA400, WK DITCO-Europe, Attn: DTE, Unit 4235, Box 375, APO AE 09136–5375 (ZD14)
DCA500, KH DITCO-Alaska, Attn: DTA, 9864 L Street, Suite 201, Elmendorf AFB, AK 99506–2615 (ZD15)

PART 8—NATIONAL IMAGERY AND MAPPING AGENCY ACTIVITY ADDRESS NUMBERS

NMA100, BQ National Imagery and Mapping Agency, Contracts in Support of Systems and Technology, Attn: PCS/D–88, 4600 Sangamore Road, Bethesda, MD 20816–5003 (ZM10)
NMA201, Y2 National Imagery and Mapping Agency, Micro Purchasing Operations (East), Attn: PCM–E/D–6, 4600 Sangamore Road, Bethesda, MD 20816–5003 (ZM21)
NMA202, Z2 National Imagery and Mapping Agency, Micro Purchasing Operations (West), Attn: PCM–W/L–13, 3200 South Second Street, St. Louis, MO 63118–3399 (ZM22)
NMA301, V2 National Imagery and Mapping Agency, Contracts in Support of Operations (East), Attn: PCO–E/D–5, 4600 Sangamore Road, Bethesda, MD 20816–5003 (ZM31)
NMA302, YQ National Imagery and Mapping Agency, Contracts in Support of Operations (West), Attn: PCO–W/L–13, 3200 South Second Street, St. Louis, MO 63118–3399 (ZM32)
NMA401, 8Y National Imagery and Mapping Agency, Contracts in Support of Corp Affairs (East), Attn: PCC–E/D–6, 4600 Sangamore Road, Bethesda, MD 20816–5003 (ZM41)
NMA402, YZ National Imagery and Mapping Agency, Contracts in Support of Corp Affairs (West), Attn: PCC–W/L–13, 3200 South Second Street, St. Louis, MO 63118–3399 (ZM42)

PART 9—DEFENSE SPECIAL WEAPONS AGENCY ACTIVITY ADDRESS NUMBERS

DSWA01, 8Z Defense Special Weapons Agency, Headquarters, Attn: Acquisition Management Directorate, 6801 Telegraph Road, Alexandria, VA 22310–3398 (ZS01)
DSWA02, 0N Defense Special Weapons Agency, Field Command, Attn: Acquisition Management Office (FCA), 1680 Texas Street, S.E., Kirtland AFB, NM 87115–5669 (ZS02)

PART 10—MISCELLANEOUS DEFENSE ACTIVITIES ACTIVITY ADDRESS NUMBERS

MDA112, E0 T–ASA, Sacramento Contracting Office, 3116 Peacekeeper Way, McClellan AFB, CA 95652–1068 (ZP12)
MDA113, VE T–ASA, March Contracting Office, 1363 Z Street, Building 2730, March AFB, GA 92518–2717 (ZP13)
MDA114, VV T–ASA, Alexandria Contracting Office, 601 North Fairfax Drive, Suite 311, Alexandria, VA 22314–2007 (ZP14)
MDA210, SF Defense Finance and Accounting Service Headquarters, 1931 Jefferson Davis Highway, Arlington, VA 22240–5291 (ZF21)
MDA220 Defense Finance and Accounting Service, Integrated Contracting Office, 1931 Jefferson Davis Highway, Arlington, VA 22240–5291 (ZF22)
MDA230, SU Defense Finance and Accounting Service, Cleveland Center, 1240 East 9th Street, Cleveland, OH 44199–2055 (ZF23)
MDA240 Defense Finance and Accounting Service, Columbus Center, 4280 East 5th Avenue, Columbus, OH 43219–1879 (ZF24)
MDA250, SV Defense Finance and Accounting Service, Denver Center, 6760 East

Irvington Place, Denver, CO 80279–8000 (ZF25)

MDA260, ST Defense Finance and Accounting Service, Indianapolis Center, 8899 East 56th Street, Building #1, Indianapolis, IN 46249–0100 (ZF26)

MDA270 Defense Finance and Accounting Service, Financial Systems Organization, 8899 East 56th Street, Indianapolis, IN 46249–0100 (ZF27)

MDA280 SY Defense Finance and Accounting Service, Kansas City Center, 1500 East 95th Street, Kansas City, MO 64131 (ZF28)

MDA410, DR DoDDS, Attn: Procurement Division, 4040 North Fairfax Drive, 8th Floor, Arlington, VA 22203–1635 (ZK10)

MDA412 9Y DoDDs, European Procurement Office, Unit 29649, Box 4000, APO, AE 09096 (ZK12)

MDA414, Y4 DoD Education Activity, Education Supplies Procurement Office, Attn: DESPO, 8000 Jefferson Davis Highway, Richmond, VA 23297–5320 (ZK14)

MDA416, YT DoD Education Activity, Pacific Procurement Office, PSC 556, Box 796, FPO, AP 96386–0796 (ZK16)

MDA904 Maryland Procurement Office, Attn: N363, 9800 Savage Road, Fort George G. Meade, MD 20755–6000 (ZD04)

MDA905 B4 Uniformed Services University of the Health Sciences, Attn: Directorate of Contracting, 4301 Jones Bridge Road, Bethesda, MD 20814–4799 (ZD05)

MDA906 Office of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), Attn: Contract Management Division, Building 222, East Harlow Avenue, FAMC, Aurora, CO 80045–6900 (ZD06)

MDA907 Purchasing and Contracting Office, Menwith Hill Station, APO AE 09210 (ZD07)

MDA908, 2X Virginia Contracting Activity, Attn: DAP P.O. Box 46563, Washington, DC 20050–6563 (ZD50)

MDA928 Armed Forces Radiobiology Research Institute, Attn: Acquisition Management Division, 8901 Wisconsin Avenue, Bethesda MD 20889–5145 (ZD28)

MDA946 Washington Headquarters Services, Real Estate and Facilities Directorate, 1155 Defense Pentagon, Room 3C345, Washington, DC 20301–1155 (ZD46)

MDA972 WS DARPA, Contract Management Office, 3701 North Fairfax Drive, Arlington, VA 22203 (ZD72)

PART 11—ON-SITE INSPECTION AGENCY ACTIVITY ADDRESS NUMBER

OSIA01 On-Site Inspection Agency, Acquisition Management, 201 W Service Road, Dulles Int Airport, PO Box 17498, Washington, DC 20041–0498 (ZD74)

PART 12—BALLISTIC MISSILE DEFENSE ORGANIZATION ACTIVITY ADDRESS NUMBER

HQ0006, SS Ballistic Missile Defense Organization, Attn: BMDO/DCTP, 7100 Defense Pentagon, Room 1E1019, Washington, DC 20301–7100 (ZD60)

PART 13—DEFENSE COMMISSARY AGENCY ACTIVITY ADDRESS NUMBERS

DECA01, ZG Defense Commissary Agency, East Service Center, Attn: DeCA/ES–AM, Building P–11200, 38th Street and E Avenue, Fort Lee, VA 23801–6390 (ZD81)

DECA02, ZT Defense Commissary Agency, West Service Center, Attn: DeCA/WS–AM, Building 3184, Kelly AFB, TX 78241–6290 (ZD82)

DECA03, 0H Defense Commissary Agency, North East Region, Attn: DeCA/NE–AM, Building 2257, Fort George G. Meade, MD 20755–5520 (ZD83)

DECA04, BE Defense Commissary Agency, Central Region, Attn: DeCA/CE–AM, 1140 Gator Boulevard, Norfolk, VA 23521–2228 (ZD84)

DECA05, 0L Defense Commissary Agency, Southern Region, Attn: DeCA/SO–AM, Building 835, Maxwell AFB, AL 36112–6722 (ZD85)

DECA06, 0J Defense Commissary Agency, Midwest Region, Attn: DeCA/MW–AM, Building 3030, Kelly AFB, TX 78241–6290 (ZD86)

DECA07, 0Z Defense Commissary Agency, South West Region, Attn: DeCA/SW–AM, Building 329, Marine Corps Air Station El Toro, Santa Ana, CA 92709–5002 (ZD87)

DECA08, 0K Defense Commissary Agency, Northwest Region, Attn: DeCA/NW–AM, Building 9630, Fort Lewis, WA 98433–7300 (ZD88)

PART 14—UNITED STATES SPECIAL OPERATIONS COMMAND ACTIVITY ADDRESS NUMBERS

USZA22, 2U USSOCOM Headquarters, Directorate of Procurement, 7701 Tampa Point Boulevard, MacDill AFB, FL 33621–5323 (ZA22)

USZA24 USSCOCOM, 24th STS, Attn: MS–Z, Pope AFB, NC 28308–5000 (ZA24)

USZA90 USSOCOM, JSOC, P.O. Box 70329, Fort Bragg, NC 28307–5000 (ZA90)

USZA91 USSOCOM, SOTF, Attn: Contracting, P.O. Box 70660, Fort Bragg, NC 28307–5000 (ZA91)

USZA92, 1F USSOCOM, USASOC, Attn: AOCO, Fort Bragg, NC 28307–5200 (ZA92)

USZA93 Special Boat Squadron One (SBR–1), 3400 Tarawa Road, San Diego, CA 92155–5176 (ZA93)

USZA94 Naval Special Warfare Group One (NSWG–1), 3632 Guadalcanal Road, San Diego, CA 92155–5583 (ZA94)

USZA95, 1A USSOCOM, TAKO, Contracting Division, Attn: AMSAT–D–TK, 4300 Goodfellow Boulevard, St. Louis, MO 63120 (AZ95)
USZA96, 1P Special Boat Squadron Two (SBR–2), NAB Little Creek, 2220 Schofield Road, Suite 100, Norfolk, VA 23521–2845 (ZA96)
USZA97 Naval Special Warfare Group Two (NSWG–2), 1430 Helicopter Road, Suite 200, Norfolk, VA 23521–2944 (ZA97)
USZA98 Naval Special Warfare Center, 2446 Trident Way, San Diego, CA 92155–5494 (ZA98)
USZA99 Naval Special Warfare Development Group (ZA99), 1636 Regulus Avenue, Virginia Beach, VA 23461–2299

[59 FR 27678, May 27, 1994, as amended at 60 FR 61615, 61620, 61623, 61626–61627, Nov. 30, 1995; 61 FR 7751, Feb. 29, 1996; 61 FR 18195, Apr. 24, 1996; 61 FR 50457, 50458, Sept. 26, 1996; 62 FR 34136, June 24, 1997]

APPENDIX H—DEBARMENT AND SUSPENSION PROCEDURES

Sec.
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H–101 Notification.
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AUTHORITY; 41 U.S.C. 421 and 48 CFR chapter 1.

H–100 Scope.

This appendix provides uniform debarment and suspension procedures to be followed by all debarring and suspending officials.

H–101 Notification.

Contractors will be notified of the proposed debarment or suspension in accordance with FAR 9.406–3 or 9.407–3. A copy of the record which formed the basis for the decision by the debarring and suspending official will be made available to the contractor. If there is a reason to withhold from the contractor any portion of the record, the contractor will be informed of what is withheld and the reasons for such withholding.

H–102 Nature of proceeding.

There are two distinct proceedings which may be involved in the suspension or debarment process. The first is the presentation of matters in opposition to the suspension or proposed debarment by the contractor.

The second is fact-finding which occurs only in cases in which the contractor's presentation of matters in opposition raises a genuine dispute over one or more material facts. In a suspension action based upon an indictment or in a proposed debarment action based upon a conviction or civil judgment, there will be no fact-filling proceeding concerning the matters alleged in the indictment, or the facts underlying the convictions or civil judgment. However, to the extent that the proposed action stems from the contractor's affiliation with an individual or firm indicted or convicted, or the subject of a civil judgment, fact-finding is permitted if a genuine dispute of fact is raised as to the question of affiliation as defined in FAR 9.403.

H–103 Presentation of matters in opposition.

(a) In accordance with FAR 9.406–3(c) and 9.407–3(c), matters in opposition may be presented in person, in writing, or through a representative. Matters in opposition may be presented through any combination of the foregoing methods, but if a contractor desires to present matters in person or through a representative, any written material should be delivered at least 5 working days in advance of the presentation. Usually, all matters in opposition are presented in a single proceeding. A contractor who becomes aware of a pending indictment or allegations of wrongdoing that the contractor believes may lead to suspension or debarment action may contact the debarring and suspending official or designee to provide information as to the contractor's present responsibility.

(b) An in-person presentation is an informal meeting, nonadversarial in nature. The debarring and suspending official and/or other agency representatives may ask questions of the contractor or its representative making the presentation. The contractor may select the individuals who will attend the meeting on the contractor's behalf; individual respondents or principals of a business firm respondent may attend and speak for themselves.

(c) In accordance with FAR 9.406–3(c) and 9.407–3(c), the contractor may submit matters in opposition within 30 days from receipt of the notice of suspension or proposed debarment.

(d) The opportunity to present matters in opposition to debarment includes the opportunity to present matters concerning the duration of the debarment.

H–104 Fact-finding.

(a) The debarring and suspending official will determine whether the contractor's presentation has raised a genuine dispute of material fact(s). If the debarring and suspending official has decided against debarment or continued suspension, or the provisions of FAR 9.4 preclude fact-finding, no fact-finding will be conducted. If the debarring and suspending official has determined a genuine dispute of material fact(s) exists, a designated fact-finder will conduct the fact-

finding proceeding. The proceeding before the fact-finder will be limited to a finding of the facts in dispute as determined by the debarring and suspending official.

(b) The designated fact-finder will establish the date for a fact-finding proceeding, normally to be held within 45 working days of the contractor's presentation of matters in opposition. An official record will be made of the fact-finding proceeding.

(c) The Government's representative and the contractor will have an opportunity to present evidence relevant to the facts at issues. The contractor may appear in person or through a representative in the fact-finding proceeding.

(d) Neither the Federal Rules of Evidence nor the Federal Rules of Civil Procedure govern fact-finding. Hearsay evidence may be presented and will be given appropriate weight by the fact-finder.

(e) Witnesses may testify in person. Witnesses will be reminded of the official nature of the proceeding and that any false testimony given is subject to criminal prosecution. Witnesses are subject to cross-examination.

H–105 Timing requirements.

All timing requirements set forth in these procedures may be extended by the debarring and suspending official for good cause.

H–106 Subsequent to fact-finding.

(a) Written findings of fact will be prepared by the fact-finder as mandated by FAR 9.406–3(d)(2)(i) and 9.407–3(d)(2)(i).

(b) The fact-finder will determine the disputed fact(s) by a preponderance of the evidence. A copy of the findings of fact will be provided to the debarring and suspending official, the Government's representative, and the contractor.

(c) The debarring and suspending official will determine whether to continue the suspension or to debar the contractor based upon the entire administrative record, including the findings of fact.

(d) Prompt written notice of the debarring and suspending official's decision will be sent to the contractor and any affiliates involved, in compliance with FAR 9.406–3(e) and 9.407–3(d)(4).

[59 FR 27700, May 27, 1994]

APPENDIX I—POLICY AND PROCEDURES FOR THE DOD PILOT MENTOR-PROTEGE PROGRAM

Sec.

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I–101 Definitions.
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I–101.3 Minority institution of higher education.
I–102 General procedures.
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AUTHORITY; 41 U.S.C. 421 and 48 CFR chapter 1.

I–100 Purpose.

(a) Appendix I to 48 CFR chapter 2 implements the Pilot Mentor-Protege Program (hereinafter referred to as the ''Program'') established under section 831 of Pub. L. 101–510, The National Defense Authorization Act for Fiscal Year 1991, as amended. The purpose of the Program is to—

(1) Provide incentives to major DoD contractors, performing under at least one active approved subcontracting plan negotiated with DoD or other Federal agencies, to assist small disadvantaged businesses (SDBs) in enhancing their capabilities to satisfy DoD and other contract and subcontract requirements;

(2) Increase the overall participation of SDBs as subcontractors and suppliers and DoD contracts, other Federal agency contracts and commercial contracts and;

(3) Foster the establishment of long term business relationships between SDBs and such contractors.

(b) Under the Program, eligible companies approved as mentor firms will enter into mentor-protege agreements with eligible SDBs as protege firms to provide appropriate developmental assistance to enhance the capabilities of SDBs to perform as subcontractors and suppliers. According to the law, the DoD may provide the mentor firm with either cost reimbursement, credit against SDB subcontracting goals established under contracts with DoD or other Federal agencies, or a combination of credit and reimbursement.

(c) DoD will measure the overall success of the Program by the extent to which the Program results in—

(1) An increase in the dollar value of subcontracts awarded to SDBs by mentor firms under DoD contracts;

(2) An increase in the dollar value of contract and subcontract awards to protege firms (under DoD contracts, contracts awarded by other Federal agencies and under

commercial contracts) since the date of their entry into the Program;

(3) An increase in the number and dollar value of subcontracts awarded to a protege firm (or former protege firm) by its mentor firm (or former mentor firm);

(4) An improvement in the participation of SDBs in DoD, other Federal agencies, and commercial contracting opportunities that can be attributed to the development of SDBs as protege firms under the Program;

(5) An increase in subcontracting with SDB concerns in industry categories where SDBs have not traditionally participated within the mentor firm's vendor base;

(6) The involvement of emerging SDBs in the Program;

(7) An expanded relationship between mentor firms and protege firms to include non-DoD programs; and

(8) The development of protege firms that are competitive as subcontractors and suppliers to DoD or in other Federal agencies or commercial markets.

(d) This policy sets forth the procedures for participation in the Program applicable to companies that are interested in receiving—

(1) A separate contract, cooperative agreement, or other agreement entered into between DoD and the mentor firm—company is interested in reimbursement through a separate contract, cooperative agreement or other agreement with DoD or, a combination of reimbursement through such agreement with DoD and credit against SDB subcontract goals for any unreimbursed costs incurred under the Program.

(2) Program Manager funded reimbursement—company has identified a DoD program manager willing to fund the Program and the company is interested in reimbursement for technical assistance costs to a protege firm(s) through a separately priced cost reimbursement contract line item added to a DoD contract, with credit against SDB subcontracting goals for any unreimbursed costs.

(3) Indirect reimbursement and credit—company is interested in receiving reimbursement for indirect costs incurred under the Program as well as credit against SDB subcontract goals for these indirect costs.

(4) Credit only—company is interested in receiving credit only against SDB subcontracting goals for costs incurred under the Program.

I–101 Definitions.

I–101.1 Emerging SDB concern.

A small disadvantaged business whose size is no greater than 50 percent of the numerical size standard applicable to the standard industrial code for the supplies or services which the protege firm provides or would provide to the mentor firm.

I–101.2 Historically black college or university.

An institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. The term also means any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

I–101.3 Minority institution of higher education.

An institution meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d–5(3). The term also includes Hispanic-serving institutions as defined in Section 316(b)(1) of such Act (20 U.S.C. 1059c(b)(1)).

I–102 General Procedures.

(a) At any time between October 1, 1991, and September 30, 1998, companies interested in becoming mentor firms that want to take credit only for costs incurred for providing developmental assistance to one or more protege firms, or receive credit and reimbursement of indirect costs incurred under the Program, must apply to the DoD for participation in the Program pursuant to the application process set forth at I–106(a).

(b) At any time between October 1, 1991, and September 30, 1998, companies interested in becoming mentor firms that are able to identify funding from a DoD contract program manager(s) to provide developmental assistance to one or more protege firms must apply to the DoD for participation in the Program, pursuant to the application process set forth at I–106(d).

(c) Once funding is made available by DoD, companies that are interested in becoming mentor firms that want to receive reimbursement only or a combination of reimbursement and credit for providing developmental assistance to one or more protege firms by either a separate contract, cooperative agreement or other agreement awarded for that purpose, will be solicited for participation in the Program through a program solicitation. The Program solicitation will be issued by DoD and will contain, among other things, the statement of work and the evaluation factors upon which award will be based. Companies seeking reimbursement only, or a combination of reimbursement and credit, must respond to the solicitation and will be evaluated on the quality of the proposed developmental assistance program for each protege, in accordance with the evaluation factors contained in the solicitation. Awards will be made by DoD to approved mentor firms, to provide the proposed developmental assistance to one or more identified protege firms.

I–103 Program duration.

Activities under the Program may only occur during the following periods:

(a) From October 1, 1991, until September 30, 1998, companies may apply for participation in the Program as mentor firms pursuant to I–102, General Procedures, and once approved, may enter into mentor-protege agreements, pursuant to I–107, Mentor-Protege Agreements.

(b) From October 1, 1991, until September 30, 1999, a mentor firm's costs of providing developmental assistance to its protege firm may be reimbursed only if—

(1) Such costs are incurred after either a separate contact, cooperative agreement, or other agreement is entered into between DoD and the mentor firm;

(2) The funding for such costs have been identified by a DoD program manager and such costs are incurred pursuant to the execution of a separately priced contract line item added to a DoD contract(s); to

(3) Such costs are included in indirect expense pools.

(c) From October 1, 1991, until September 30, 1999, mentor firms may receive credit toward the attainment of such firm's goals for subcontract awards to SDBs for unreimbursed costs incurred in providing developmental assistance to its protege firms, only if such costs are incurred pursuant to an approved mentor-protege agreement.

I–104 Eligibility requirements for a protege firm.

(a) An entity may qualify as a protege firm if it is—

(1) An SDB concern as defined by section 8(d)(3)(C) of the Small Business Act (15 U.S.C. 637(D)(3)(C)) which is—

(i) Eligible for the award of Federal contracts; and

(ii) A small business according to the SBA size standard for the Standard Industrial Classification (SIC) code which represents the contemplated supplies or services to be provided by the protege firm to the mentor firm;

(2) A business entity that meets the criteria in (a)(1) of this section and is owned and controlled by either an Indian tribe as defined by section 8(a)(13) of the Small Business Act (15 U.S.C. 637(a)(13)) or a Native Hawaiian Organization as defined by section 8(a)(15) of the Small Business Act (15 U.S.C. 637(a)(15)); or

(3) A qualified organization employing the severely disabled as defined in Pub. L. 102–172, section 8064A.

(b) A protege firm may self-certify to a mentor firm that it meets the eligibility requirements in paragraphs I–104(a)(1), (2), or (3). Mentor firms may rely in good faith on a written representation that the entity meets the requirements of paragraphs I–104(a) (1), (2), or (3).

(c) A protege firm may have only one active mentor-protege agreement.

I–105 Selection of protege firms.

(a) Mentor firms will be solely responsible for selecting protege firms. Mentor firms are encouraged to identify and select protege firms that are defined as emerging SDB concerns.

(b) The selection of protege firms by mentor firms may not be protested, except as in I–105(c).

(c) In the event of a protest regarding the size or disadvantaged status of an entity selected to be a protege firm as defined in either paragraph I–104(a)(1) or (2), the mentor firm shall refer the protest to the Small Business Administration (SBA) to resolve in accordance with 13 CFR part 121 (with respect to size) or 13 CFR part 124 (with respect to disadvantaged status).

(d) For purposes of the Small Business Act, no determination of affiliation or control (either direct or indirect) may be found between a protege firm and its mentor firm on the basis that the mentor firm has agreed to furnish (or has furnished) to its protege firm pursuant to a mentor-protege agreement any form of developmental assistance described in paragraph I–107(f).

(e) If at any time pursuant to paragraph I–105(c), the protege firm is determined by the SBA not to be a small disadvantaged business concern, assistance furnished such business concern by the mentor firm after the date of the determination, may not be considered assistance furnished under the program.

I–106 Approval process for companies to participate in the Program as mentor firms.

(a) On or after October 1, 1991, a company that is interested in becoming a mentor firm that is seeking credit only against SDB subcontracting goals for costs incurred under the Program, or reimbursement of developmental assistance costs via inclusion of program costs in indirect expense pools and credit for such costs, must submit a request to the DoD, DUSD(I&CP)SADBU to be approved as a mentor firm under the Program. The request will be evaluated on the extent to which the company's proposal addresses the items listed in paragraphs (b) and (c) of this section. To the maximum extent possible, the request should be limited to not more than 10 pages, single spaced. A company may identify more than one protege in its request for approval under the Program. The information required in paragraphs I–106(b) and (c) must be submitted to be considered for approval as a mentor firm, and may cover one or more proposed mentor-protege relationships.

(b) A company must indicate whether it is interested in participating in the Program pursuant to paragraph I–100(d), (2), (3), or (4), and submit the following information:

(1) A statement that the company is currently performing under at least one active approved subcontracting plan negotiated with DoD or another Federal agency pursuant to FAR 19.702, and that the company is currently eligible for the award of Federal contracts.

(2) The number of proposed mentor-protege relationships covered by the request for approval as a mentor firm.

(3) A summary of the company's historical and recent activities and accomplishments under their SDB program.

(4) The total dollar amount of DoD contracts and subcontracts received by the company during the two preceding fiscal years (show prime contracts and subcontracts separately per year).

(5) The total dollar amount of all other federal agency contracts and subcontracts received by the company during the two preceding fiscal years (show prime contracts and subcontracts separately per year).

(6) The total dollar amount of subcontracts awarded by the company under DoD contracts during the two preceding fiscal years.

(7) The total dollar amount of subcontracts awarded by the company under all other Federal agency contracts during the two preceding fiscal years.

(8) The total dollar amount and percentage of subcontract awards made to all SDB firms under DoD contracts and other Federal agency contracts during the two preceding fiscal years (show DoD separately). If presently required to submit a SF 295, provide copies of the two preceding years end reports.

(9) The number and total dollar amount of subcontract awards made to the identified protege firm(s) during the two preceding fiscal years (if any). Show DoD subcontract awards and other Federal agency subcontract awards separately.

(c) In addition to the information required in paragraph I–106(b), companies must submit the following information for each proposed mentor-protege relationship:

(1) Information on the company's ability to provide developmental assistance to the identified protege firm and how that assistance will potentially increase subcontracting opportunities in industry categories where SDBs are not dominant in the company's vendor base.

(2) A letter of intent indicating that both the mentor firm and the protege firm will negotiate a mentor-protege agreement. The letter of intent must be signed by both parties and contain the following information:

(i) The name, address, and telephone number of both parties.

(ii) The protege firm's business classification, based upon the SIC code(s) which represents the contemplated supplies or services to be provided by the protege firm to the mentor firm.

(iii) A statement that the protege firm meets the eligibility criteria in either paragraph I–104(a)(1), (2) or (3).

(iv) A preliminary assessment of the developmental needs of the protege firm and the proposed developmental assistance the mentor firm envisions providing the protege firm to address those needs and enhance the protege firm's ability to perform successfully under contracts or subcontracts with DoD, other federal agencies and commercial contracts.

(v) An estimate of the dollar amount and type of subcontracts that will be awarded by the mentor firm to the protege firm, and the period of time over which they will be awarded.

(vi) Information as to whether the protege firm's development will be concentrated on a single major system, a service or supply program, research and development programs, initial production, mature systems, or in the mentor firm's overall contract base.

(3) An estimate of the cost of the developmental assistance program and the period of time over which the assistance will be provided.

(d) A company that has identified Program funds to be made available through a DoD program manager must provide: the information in paragraphs I–106(b) and (c) to the appropriate program manager and to the DUSD(I&CP)SADBU, with a letter signed by the appropriate program manager indicating the amount of funding that has been identified for the developmental assistance program.

(e) Companies seeking credit only for the cost of developmental assistance, reimbursement of program costs via their inclusion in indirect expense pools and credit for such costs, or reimbursement with funds made available by a DoD program manager, shall submit four copies of the information specified in paragraphs I–106(b) and (c) to: DoD, DUSD(I&CP)SADBU, 3061 Defense Pentagon, Washington, DC. 20301–3061, Attn: Pilot Mentor-Protege Program Manager. Upon receipt of this information, DUSD(I&CP)SADBU will review and evaluate each request and, to the maximum extent possible, within 30 days advise each applicant of approval or rejection of its request to become a mentor firm.

(f) Companies interested in reimbursement of costs of a developmental assistance program through either a separate contract, cooperative agreement, or other agreement awarded for that purpose will be solicited to provide the information in paragraphs I–106(b) and (c) as well as any other information specified in the program solicitation.

(g) A company approved as a mentor firm for credit only, for reimbursement through funds made available by a DoD program manager, or for reimbursement via inclusion of program costs in indirect expense pools and credit for such costs, may proceed with

the negotiation of the mentor-protege agreement with the identified protege firm(s).

(h) Companies that apply for participation in the program pursuant to paragraph I–106(e) and are not approved, will be provided the reasons and an opportunity to submit additional information for reconsideration.

(i) A company may not be approved for participation in the Program as a mentor firm if at the time of requesting participation in the Program it is currently debarred or suspended from contracting with the Federal government pursuant to FAR subpart 9.4.

(j) If the mentor firm is suspended or debarred while performing under an approved mentor-protege agreement, the mentor firm—

(1) May continue to provide assistance to its protege firms pursuant to approved mentor-protege agreements entered into prior to the imposition of such suspension or debarment;

(2) May not be reimbursed or take credit for any costs of providing developmental assistance to its protege firm, incurred more than 30 days after the imposition of such suspension or debarment; and

(3) Shall promptly give notice of its suspension or debarment to its protege firm and DUSD(I&CP)SADBU.

I–107 Mentor-protege agreements.

(a) A signed mentor-protege agreement for each mentor-protege relationship identified under I–106(b)(2) must be submitted to DUSD(I&CP)SADBU and approved before developmental assistance costs may be incurred. To the maximum extent possible, such mentor-protege agreements will be approved within five business days of receipt.

(b) Each signed mentor-protege agreement submitted for approval under the Program shall include—

(1) The name, address and telephone number of the mentor firm and the protege firm and a point of contact within the mentor firm who will administer the developmental assistance program;

(2) The SIC code which represents the contemplated supplies or services to be provided by the protege firm to the mentor firm and a statement that at the time the agreement is submitted for approval, the protege firm, if an SDB concern, does not exceed the size standard for the appropriate SIC code.

(3) A developmental program for the protege firm specifying the type of assistance identified in paragraph I–107(f) that will be provided. The developmental program shall also include—

(i) Factors to assess the protege firm's developmental progress under the Program including milestones for providing the identified assistance; and

(ii) The anticipated number, dollar value, and type of subcontracts to be awarded the protege firm consistent with the extent and nature of mentor firm's business, and the period of time over which they will be awarded.

(iii) The dollar value of the technical assistance program broken out per year.

(4) A program participation term for the protege firm which shall not exceed nine years.

(5) Procedures for the mentor firm to notify the protege firm in writing at least 30 days in advance of the mentor firm's intent to voluntarily withdraw its participation in the Program. Mentor firms may only voluntarily terminate the mentor-protege agreement(s) if they no longer want to be a participant in the Program as a mentor firm. Otherwise, a mentor firm must terminate a mentor-protege agreement for cause.

(6) Procedures for a protege firm to notify the mentor firm in writing at least 30 days in advance of the protege firm's intent to voluntarily terminate the mentor-protege agreement.

(7) Procedures for the mentor firm to terminate the mentor-protege agreement for cause which provide—

(i) The protege firm shall be furnished a written notice of the proposed termination, stating the specific reasons for such action, at least 30 days in advance of the effective date of such proposed termination.

(ii) The protege firm shall have 30 days to respond to such notice of proposed termination, and may rebut any findings believed to be erroneous and offer a remedial program.

(iii) Upon prompt consideration of the protege firm's response, the mentor firm shall either withdraw the notice of proposed termination and continue the protege firm's participation, or issue the notice of termination.

(iv) The decision of the mentor firm regarding termination for cause, conforming with the requirements of this section, shall be final and is not reviewable by DoD.

(8) Additional terms and conditions as may be agreed upon by both parties.

(c) Mentor firms shall send a copy of any termination notices to the DoD, DUSD(I&CP)SADBU, and where funding is made available through a DoD program manager, also provide a copy to the program manager and to the appropriate PCO of ACO.

(d) Termination of a mentor-protege agreement shall not impair the obligations of the mentor firm to perform pursuant to its contractual obligations under Government contracts and subcontracts. Termination of all or part of the mentor-protege agreement shall not impair the obligations of the protege firm to perform pursuant to its contractual obligations under any contract awarded to the protege firm by the mentor firm.

(e) Only developmental assistance provided after DoD approval of the mentor-protege agreement may be reimbursed.

(f) The mentor-protege agreement may provide for the mentor firm to furnish any or all of the types of developmental assistance as follows:

(1) Assistance by mentor firm personnel in—

(i) General business management, including organizational management, financial management, and personnel management, marketing, business development, and overall business planning;

(ii) Engineering and technical matters such as production inventory control, quality assurance; and

(iii) Any other assistance designed to develop the capabilities of the protege firm under the development program.

(2) Award of subcontracts under DoD contracts or other contracts on a non-competitive basis.

(3) Payment of progress payments for the performance of subcontracts by a protege firm in amounts as provided for in the subcontract; but in no event may any such progress payment exceed 100 percent of the costs incurred by the protege firm for the performance of the subcontract. Provision of progress payments by a mentor firm to a protege firm at a rate other than the customary rate for small disadvantaged businesses shall be implemented in accordance with FAR 32.504(c).

(4) Advance payments under such subcontracts. Advance payments must be administered by the mentor firm in accordance with FAR subpart 32.4.

(5) Loans.

(6) Investment(s) in the protege firm in exchange for an ownership interest in the protege firm, not to exceed 10 percent of the total ownership interest. Investments may include but not be limited to cash, stock, contributions in kind, etc.

(7) Assistance obtained by the mentor firm for the protege firm from one or more of the following:

(i) Small Business Development Centers (SBDC) established pursuant to section 21 of the Small Business Act (15 U.S.C. 648).

(ii) Entities providing procurement technical assistance pursuant to chapter 142 of Title 10 U.S.C. (Procurement Technical Assistance Centers.)

(iii) Historically Black Colleges and Universities.

(iv) Minority institutions of higher education.

(g) A mentor firm may not require an SDB concern to enter into a mentor-protege agreement as a condition for being awarded a contract by the mentor firm including a subcontract under a DoD contract awarded to the mentor firm.

I–108 Reimbursement procedures.

(a) A mentor firm may be reimbursed only for the cost of developmental assistance incurred by the mentor firm and provided to a protege firm under I–107(f) (1) and (7), and pursuant to an approved mentor-protege agreement. Reimbursement shall be made only through either a separate contract, cooperative agreement, or other agreement entered into between the DoD and the mentor firm awarded for the purpose of providing developmental assistance to one or more protege firms; a separately priced contract line item in a DoD contract; or inclusion of program costs in indirect expense pools. No other means for the reimbursement of the costs of developmental assistance provided under I–107(f) (1) and (7) are authorized under the Program.

(b) Costs reimbursed via inclusion in indirect expense pools may be reimbursed only to the extent that they are otherwise reasonable, allocable, and allowable.

(c) Assistance provided in the form of progress payments in excess of the customary progress payment rate for SDBs, shall be reimbursed only if implemented in accordance with FAR 32.504(c).

(d) Assistance provided in the form of advance payments shall be reimbursed only if they have been provided to a protege firm under subcontract terms and conditions similar to FAR 52.232–12. Reimbursement of any advance payments shall be made pursuant to the inclusion of DFARS 252.232–7008, Reimbursement of Advance Payments—DoD Pilot Mentor-Protege Program, in appropriate contracts. In requesting reimbursement, the mentor firm agrees that the risk of any financial loss due to the failure or inability of a protege firm to repay any unliquidated advance payments shall be the sole responsibility of the mentor firm.

(e) No other forms of developmental assistance are authorized for reimbursement under the Program.

I–109 Credit for unreimbursed developmental assistance costs.

(a) Developmental assistance costs incurred by a mentor firm for providing assistance to a protege firm pursuant to an approved mentor protege agreement, which have not been reimbursed through either a separate contract, cooperative agreement, or other agreement entered into between DoD and the mentor firm, or through a separately priced contract line item added to a DoD contract, may be credited as if it were a subcontract award for determining the performance of such mentor firm in attaining an SDB subcontracting goal(s) established under any contract containing a subcontracting plan pursuant to FAR 52.219–9.

(b) For crediting purposes only, costs that have been reimbursed via inclusion in indirect expense pools may also be credited as subcontract awards for determining the performance of such mentor firm in attaining an SDB subcontracting goal(s) established

under any contract containing a subcontracting plan pursuant to FAR 52.219–9. However, costs that have not been reimbursed because they are not reasonable, allocable, or allowable under I–108(b), shall not be recognized for crediting purposes.

(c) Other costs that are not eligible for reimbursement pursuant to I–108(a) may be recognized for credit only if requested, identified, and incorporated in an approved mentor-protege agreement. Such costs are not eligible for reimbursement.

(d) The amount of credit a mentor firm may receive for any such unreimbursed developmental assistance costs shall be equal to—

(1) Four times the total amount of such costs attributable to assistance provided by small business development centers (SBDC), historically black colleges and universities (HBCU), minority institutions (MI), and procurement technical assistance centers (PTAC).

(2) Three times the total amount of such costs attributable to assistance furnished by the mentor's employees.

(3) Two times the total amount of other such costs incurred by the mentor in carrying out the developmental assistance program.

(e) A mentor firm may receive credit toward the attainment of an SDB subcontracting goal(s) for each subcontract awarded for a product or a service by the mentor firm to an entity that qualifies as a protege firm pursuant to I–104(a). With respect to a former SDB protege (firm(s), a mentor may take credit for awards to such concern(s) that, except for its size would be a small business concern owned and controlled by socially and economically disadvantaged individuals, but only if—

(1) The size of such business concern is not more than two times the appropriate size standard;

(2) The business concern formerly had a mentor-protege agreement with such mentor firm that was not terminated for cause; and

(3) The credit is taken not later than October 1, 1999.

(f) Amounts credited toward the SDB goal(s) for unreimbursed costs under the Program shall be separately identified from the amounts credited toward the goal resulting from the award of actual subcontracts to protege firms. The combination of the two shall equal the mentor firm's overall accomplishment toward the SDB goal(s).

(g) Adjustments may be made to the amount of credit claimed under paragraphs I–109(a) and (b) if the DoD Director of Small and Disadvantaged Business Utilization determines that—

(1) A mentor firm's performance in the attainment of its SDB subcontracting goals through actual subcontract awards declined from the prior fiscal year without justifiable cause.

(2) Imposition of such a limitation on credit appears to be warranted to prevent abuse of this incentive for mentor firm's participation in the Program.

(h) The mentor firm shall be afforded the opportunity to explain the decline in SDB participation before imposition of any such limitation on credit. In making the final decision to impose a limitation on credit, the DoD Director shall consider—

(1) The mentor firm's overall SDB participation rates (in terms of percentages of subcontract awards and dollars awarded) as compared to the participation rates existing during the two fiscal years prior to the firm's admission to the Program;

(2) The mentor firm's aggregate prime contract awards during the prior two fiscal years and the total amount of subcontract awards under such contracts; and

(3) Such other information the mentor firm may wish to submit.

(i) The decision of the Director regarding the imposition of a limitation on credit shall be final.

(j) Any prospective limitation on credit imposed by the Director shall be expressed as a percentage of otherwise eligible credit and shall apply beginning on a specific date in the future and continue until a date certain during the current fiscal year.

(k) Any retroactive limitation on credit imposed by the Director shall reflect the actual costs incurred for developmental assistance (not exceeding the maximum amount reimbursed).

(l) For purposes of calculating any incentives to be paid to a mentor firm for exceeding an SDB subcontracting goal pursuant to 252.219–7009, incentives shall be paid only if an SDB subcontracting goal has been exceeded as a result of actual subcontract awards to SDBs (excluding credit under paragraphs I–109 (a), (b) and (c)).

(m) Developmental assistance costs that are incurred pursuant to an approved mentor-protege agreement, and have been charged to, but not reimbursed through a separate contract, cooperative agreement, or other agreement entered into between the DoD and the mentor firm, or through a separately priced contract line item added to a DoD contract, shall not be otherwise reimbursed, either as a direct or indirect cost, under any other DoD contract, irrespective of whether the costs have been recognized for credit against SDB subcontracting goals.

(n) Developmental assistance provided under an approved mentor-protege agreement is distinct from, and shall not duplicate, any effort that is the normal and expected product of the award and administration of the mentor firm's subcontract. Costs associated with the latter shall be accumulated and charged in accordance with the

contractor's approved accounting practices; they are not considered developmental assistance costs eligible for either credit or reimbursement under the Program.

I–110 Advance agreements on the treatment of developmental assistance costs.

Pursuant to FAR 31.109, approved mentor firms seeking reimbursement, credit, or a combination thereof, are strongly encouraged to enter into an advance agreement with the contracting officer responsible for determining final indirect cost rates under FAR 42.705. The purpose of the advance agreement is to establish the accounting treatment of the costs of the development assistance pursuant to the mentor-protege agreement prior to the incurring of any costs by the mentor firm. An advance agreement is an attempt by both the Government and the mentor firm to avoid possible subsequent dispute based on questions related to reasonableness, allocability, or allowability of the costs of developmental assistance under the Program. Absent an advance agreement, mentor firms are advised to establish the accounting treatment of such costs and address the need for any changes to their cost accounting practices that may result from the implementation of a mentor-protege agreement, prior to incurring any costs, and irrespective of whether costs will be reimbursed, credited or a combination thereof.

I–111 Reporting requirements and program reviews.

(a) Mentor firms shall report on the progress made under active mentor-protege agreements semiannually by attaching to their SF 295—

(1) A statement which includes—

(i) The number of active mentor-protege agreements in effect; and

(ii) The progress in achieving the developmental assistance objectives under each mentor-protege agreement, including whether the objectives of the Program set forth in I–100(c) were met, any problem areas encountered, and any other appropriate information.

(2) A copy of the SF 294 for each contract where developmental assistance was credited, with a statement in Block 18 identifying—

(i) The amount of dollars credited to the SDB subcontract goal as a result of developmental assistance provided to protege firms under the Program;

(ii) An explanation as to the relationship between the developmental assistance provided the protege firm(s) under the Program and the activities under the contract covered by the SF 294(s); and

(iii) The number and dollar value of subcontracts awarded to the protege firm(s), broken out per protege.

(b) For commercial companies and companies participating in the DoD ''Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans,'' indicate in Block 16 of the SF 295—

(1) The total dollars credited to the SDB goal as a result of developmental assistance provided to a protege firm(s) under the Program.

(2) The total dollar amount of subcontracts awarded to the protege firm(s) broken our per protege.

(c) The DUSD(I&CP)SADBU will conduct periodic performance reviews of the progress and accomplishments realized under approved mentor-protege agreements.

[59 FR 27701, May 27, 1994, as amended at 61 FR 50458, Sept. 26, 1996; 61 FR 54346, Oct. 18, 1996; 62 FR 34141, June 24, 1997]

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219.505–70 Added 20629
219.506 (b) amended 20629, 38243
219.508 (S–71)(1) amended 20629
(e) added 50415
219.602–3 (b)(2) amended 20629
219.702–70 Amended 20629
219.703 (a) and (b)(S–70) amended 20629
219.704 (a) added; (a)(S–70) amended 20630
219.705–4 Introductory text and (S–70) amended 20630
219.708 (c)(1) amended 20630
219.7000 (a) introductory text amended 20630
(a)(5), (a)(6) and (b) amended; (a)(7) added; interim 20630
Regulation at 53 FR 20630 confirmed 50415
219.7001 Amended; interim 20630
219.7002 Text revised; interim 20630
Regulation at 53 FR 20630 confirmed 50415
220.7004 (a)(2) and (c)(2) amended 38195
222.101–1 (S–74) amended 38246
222.101–2 (S–70) removed 38195
Removed 38246
222.609 Removed 38195
222.804–2 (b) amended 38237
222.805 (a)(2) amended 38237
222.1404 Removed 38195
222.1406 Amended 38237
222.7001—222.7004 (Subpart 222.70) Removed 38195
222.7101—222.7103 (Subpart 222.71) Removed 38195
222.7200 (a), (b) and (c) amended 6155
(a) amended 51560
223.7100—223.7105 (Subpart 223.71) Addition interim effectiveness extended to 1–1–89 32620
Addition confirmed 38237
223.7105 Amended 38237
223.7500—223.7504 (Subpart 223.75) Added; eff. 10–31–88 37764
224.102 (a)(1) introductory text, (i), and (ii) removed; (2) redesignated as (a)(2) 38180
225.102 (S–70)(2) amended 38175
225.108 (d)(1) 38237
225.109 (a)(S–71) and (d)(S–71) removed 38195
(a)(S–70) and (d)(S–70) amended 38246

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225.302 (S–72) (2)(i) and (4)(i) amended 38175
225.407 (a) (1) and (2) amended 38246
225.603 (a)(2) revised 38237
225.605 (a) amended 38238
225.702 Added 38180
(S–71) added 38195
225.703 (S–70) added 38180
225.704 Added 38180
225.7000 Amended 38203
225.7001 Amended 38246
225.7002 (a)(7) amended 38175
(c)(6) revised 38247
225.7004 Revised 38201
225.7008 Revised 38247
225.7009 Added 38203
225.7010 Added 38203
225.7011 Added 9118
(d) corrected 10250
225.7304 (c)(1)(i)(C) amended 51560
225.7305 (f) amended 38247
225.7310 (a) amended 38175
(b)(4) amended 38247
225.7401 Amended 38203
225.7405 Revised 38203
225.7501 Amended 38205
225.7601 Amended 50415
225.7607 Removed 50416
225.7900—225.7906 (Subpart 225.79) Added 38180
226.7001—226.7010 (Subpart 226.70) Added; interim 5126
Addition confirmed 20630
226.7002 Amended 20630
226.7003 Amended 20630
226.7004 (a) (1) and (3) amended 20630
226.7006 Existing text designated as (a) and amended; (b) added 20630
226.7009 Revised 20630
227 Technical correction 44975
227.470—227.481 (Subpart 227.4) Revised; interim 10781
Revision confirmed 38234
227.470—227.481–2 (Subpart 227.4) Revised; interim 43699
227.471 Corrected 50416
227.472–1 (a) corrected 50416
227.472–3 Introductory text and (a)(1)(iv) corrected 50416
227.473–2 (b)(3) added 51560
227.475–2 (b) corrected 50416
227.475–3 Corrected 50416

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227.481 Correctly revised; interim 20632
Amendatory instruction corrected 22609
Revision confirmed 38234
227.481–1 Correctly added; interim 20632
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Addition confirmed 38234
227.481–2 Correctly added; interim 20633
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228.001 Amended 38181
228.305 (e) (1) and first 2 sentences of (2) removed; last 2 sentences of (e)(2) designated as (e) 38181
228.311 Removed 38181
228.7000 (Subpart 228.70) Removed 38181
229.202 (Subpart 229.2) Removed 38175
230.401 (Subpart 230.4) Redesignated as 230.601 (Subpart 230.6) 38247
230.601 (Subpart 230.6) Redesignated from 230.401 (subpart 230.4) 38247
231.105 Removed 38181
231.205–1 Added; interim 51561
231.205–38 Revised 51561
231.7001 (Subpart 231.70) Addition at 52 FR 5771 confirmed 38238
231.7001 (a), (b), (c) (1) and (2) (i), (ii) introductory text, (A) and (B) revised 38238
232.103 Revised; interim 35511
Addition at 52 FR 30369 confirmed 38186
232.111 (a) through (d) and (S–70) removed 3752
(S–71) and (S–72) amended; interim 35511
(S–71) and (S–72) additions at 52 FR 30369 confirmed 38186
232.170–3 Introductory text and (b) amended 38186
232.171 Amended 38186
232.501–1 (a) revised; interim 35512
Revised 38186
232.501–2 (a) amended 38186
232.502–1 (S–71), (2), (4) and (7) revised; interim 35512

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(S–71) (1), (2), (4), and (7) amended 38186
232.502–2 Amended 38186
232.502–4 (S–71) revised; (S–72) through (S–74) added; interim 35512
232.905—232.906 (Subpart 232.9) Added 3752
233.213 Revised 38181
233.214 Revised 38181
233.270 Removed 38238
234.005–70 Amended 38175
235.001 Amended 38182
235.003 (a) amended 38238
235.004 (a) introductory text and (2) revised; interim 5127
(a) introductory text and (2) revision confirmed 20630
235.005 Removed 38182
235.006 Removed 38182
235.007 (a) introductory text and (5), (b), and (g) revised; (c) removed; interim 5128
(S–70) added 50416
(a) introductory text and (5), (b), and (g) revision and (c) removal confirmed 20630
(b) and (g) amended; (c) and (i) removed 38182
235.008 Removed 38182
235.010 (b) amended 38182
235.016 Added; interim 5128
Addition confirmed 20630
(a)(S–70) amended 20630
235.071 (c) amended 38182
236.201 (a)(1)(S–71) and (S–72) added; (c) revised 38175
236.402 (S–70)(1) removed; (S–70) (2) and (3) redesignated as (S–70) (1) and (2); new (S–70)(1)(iii) removed 38195
236.572–4 Removed 38195
236.573–2 Removed 38195
236.573–5 Removed 38195
236.602–4 (c) amended 38195
236.606 (S–70) removed 38195
236.7100—236.7101–5 (Subpart 236.71) Removed 38196
237.104 (S–70)(c) heading, (1), and (2), (d), (f), (m), and (n)(3) removed; (S–70)(g)(3)(viii) and (i)(1) amended; (S–70) (a) through (n) and (S–71) (a) through (e) redesignated as (S–70)(1) through (10) 38196

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237.204 (S–70) removed; (S–71) redesignated as (S–70) 50416
237.205 Revised 50416
237.205–70 Removed 50416
237.205–71 (a) (1) through (5) removed; (a) (6) and (7) redesignated as (a) (1) and (2) 38196
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237.206 Added 50416
237.270 Removed 50416
237.304 (S–73) removed 38196
237.7409 (e) amended 38201
239 Heading revised 38247
242.302 (S–75) added 8910
(S–37) removed; (S–74) redesignated as (S–73) 38196
242.501 Removed 38196
242.602 (a) amended 38196
242.603 Revised 51561
242.771 Addition confirmed and revised 38238
242.1106 (d) added; interim 38243
242.1203 (b)(1) amended 38176, 38196
242.1403–2 (a)(S–70) amended 38247
242.7100 Revised; interim 38243
242.7101 Revised; interim 38243
242.7300—242.7302 (Subpart 242.73) Added 46458
243.104 (a) amended 38196
243.204 (S–72) removed 38196
244.304 (b)(1)(v) amended 38247
244.305–2 Removed 38196
245.301 Amended 50416
245.302–72 Revised 38176
245.306 Removed 38182
245.306–2 Removed 38182
245.310 Added 50416
245.310–1 Added 50416
245.403 (a) removed; (b) redesignated as (S–70) 38182
245.505–14 (a)(3)(vi) amended; (a)(3)(vii) removed 46459
(a)(1) (iv), (v), and (vii) amended 51561
245.603–71 Added 38182
245.604 (S–70)(1) amended 38247
245.606–5 (e) added 38182
245.607–70 Amended 38182
245.607–72 (e) amended 38248
(e) amended 46459
245.608–1 (a) added; (b) removed 38182
245.608–2 Added 38182
245.608–5 Added 38182
245.608–70 (a), (b), (c), and (f) amended; (d) revised 38182

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(b), (c), (d), (e) and (f) amended 46459
245.610–1 (a) (1)(ii) and (3)(i) amended 38183
(a) (1)(viii) and (2) (i) and (v) amended 38248
(a)(1)(viii) amended 46459
245.612–3 Added 51561
245.613 Removed 38183
245.7101–3 Amended 38183
245.7101–10 Added 38183
245.7102–4 (b)(2) amended 38183
245.7102–7 Added 38183
246.371 Removed 38196
246.705 (a) amended 38176
247.105 (b)(5)(i) amended 38176
247.271–3 (b)(2) introductory text revised; (c) (1) and (2) amended 38183
247.271–4 (a)(3) and (b) (16) through (19) removed; (a)(4) redesignated as (a)(3) and amended; (b) (1), (2), (4), (5), (6) and (7) amended; (b) (8) through (15) revised 38183
247.301–2 Removed 38196
247.305–10 (a)(1)(i) revised; interim 38243
247.372 Heading revised 46459
247.373 Heading and text amended 46459
248.201 (a)(2) introductory text, (i), and (ii) removed 51561
249.110 (a)(2) amended 38248
249.7002 (d) amended 38248
251.104 Removed 38196
252 Technical correction 44975
252.203–7001 (b) amended 38184
252.203–7002 Addition confirmed and amended 38239
252.204–7004 Introductory text amended 34104
252.204–7005 Revised 34104
(a) amended 50417
252.204–7006 Addition confirmed 38176
Removed 38248
252.204–7007 Introductory text amended 34104
Introductory text corrected 50417
252.204–7008 Added 51561
252.205–7000 Addition confirmed; amended 10250
Addition confirmed 38196
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252.208–7006 Added; interim 29334
252.209–7000 Added 38196
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252.210–7001 Heading and text amended 38176
252.210–7002 Heading and text amended 38176
252.210–7005 Added 35202
252.214–7000 Removed 38176
252.214–7001 Added 38176
252.215–7002 Addition confirmed 38176
252.215–7003 Added 8910
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252.217–7129 Removed 38248
252.217–7264 Amended 38248
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Correctly designated 22609
252.219–7005 Revised; interim 5129
Revision confirmed 20630
Amended 20631
252.219–7006 Revised; interim 5129
Revision confirmed 20630
Amended 20631
252.219–7007 Added; interim 5129
Addition confirmed 20630
Heading and text amended 20631
Heading corrected 50417
252.219–7008 Added; interim 5129
Addition confirmed 20630
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252.219–7009 Added; interim 5130
Addition confirmed 20630
Amended 20631
Correctly designated 22426
252.219–7010 Added; interim 5130
Addition confirmed 20630
Amended 20631
252.219–7011 Added; interim 5131
Addition confirmed 20630
252.223–7001 Amended 38205
252.223–7003 Addition interim effectiveness extended to 1–1–89 32620
Addition confirmed 38239
252.223–7500 Added; eff. 10–31–88 37765
252.225–7007 Amended 38239
252.225–7010 Amended 38248
252.225–7022 Added 38184
252.225–7023 Revised 38248

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252.225–7026 Added 9119
Correctly designated 10250
252.225–7027 Added 9119
Correctly designated 10250
252.226–7000 Added; interim 5131
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Amended 20631
252.226–7001 Added 20631
252.227–7013 Revised; interim 10789
Introductory text amended 20634
Revision confirmed 38234
Revised; interim 43709
Regulation at 53 FR 43709 confirmed; corrected 50417
252.227–7016—252.227–7017 Removed; interim 10789
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252.227–7018 Revised; interim 10793
Revision confirmed 38234
Revised; interim 43714
Regulation at 53 FR 43714 confirmed 50417
252.227–7019—252.227–7024 Revised; interim 10794
Revision confirmed 38234
252.227–7019 Revised; interim 43714
Regulation at 53 FR 43714 confirmed 50417
252.227–7020 Republished; interim 43714
Regulation at 53 FR 43714 confirmed; corrected 50417
252.227–7021 Revised; interim 43715
Regulation at 53 FR 43714 confirmed 50417
252.227–7022—252.227–7024 Republished; interim 43715
252.227–7022 Regulation at 53 FR 43715 confirmed; corrected 50417
252.227–7023 Regulation at 53 FR 43715 confirmed 50417
252.227–7024 Regulation at 53 FR 43715 confirmed 50417
252.227–7025 Removed; interim 10789
Removal confirmed 38234
252.227–7026—252.227–7034 Revised; interim 10795
Revision confirmed 38234
Republished; interim 43715
252.227–7026 Regulation at 53 FR 43715 confirmed 50417
252.227–7027 Regulation at 53 FR 43715 confirmed 50417
252.227–7028 Revised; interim 43715
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252.227–7034 Regulation at 53 FR 43716 confirmed.....50417
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252.227–7035 Removed; interim 43709
252.227–7036 Revised; interim 43716
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252.247–7100 Amended.....38184
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252.247–7103 Removed; new 252.247–7103 redesignated from 252.247–7104 and revised 38184

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252.247–7104 Redesignated as 252.247–7103 and revised; new 252.247–7104 redesignated from 252.247–7105 and revised 38184
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252.270–7115 Amended 38197
252.270–7119 Amended 38197
252.270–7136 Amended 38197
252.270–7202 Amended 38197
252.270–7203 Amended 38197
252.270–7204 Amended 38197
253.105 Added 46459
253.170 Amended 46459
253.270 Amended 38185, 38201, 38249
253.270 Removed 46459
253 Editorial Note amended 46459; 50417
270.306 (b) amended 38197
270.322 (c)(3) amended 38197
270.324 Amended 38197, 38249
270.602 Heading and (b) revised; (a) amended; (c) and (d) added 50417
270.607 Heading revised; text amended 38197
270.1103 (a) (6) and (15) amended 38197
270.1401 (a) amended 38197
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Appendix N revised 38218
Appendix A amended 38197
Appendix O removed 38198
Appendix T amended 38205
Appendixes I, N and T amended 38249
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Effective date corrected 22282
(b)(6) amended 26205
201.601 Heading amended 26205
201.704 Amended 53616
202.101 Amended 11723
Introductory text and (a) amended 53616
203 Technical correction 32161
203.104 Added 21068
Effective date corrected 22282
203.104–1 Added 21068

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203.104–4 Added 21068
Effective date corrected 22282
203.104–5 Added 21068
Effective date corrected 22282
203.104–9 Added 21068
Effective date corrected 22282
203.502–2 Added 30740
203.571–1 Amended 16114
203.571–3 Revised 16115
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(c)(2) amended 53616
204.203 Added 20591
204.470 (Subpart 204.4) Removed; interim 7427
204.670–2 Amended; interim 4246
Comment time extended 9807
Regulation at 54 FR 4246 confirmed 26205
204.670–3 (b) heading amended 11724
204.671–3 (d)(2) amended 16115
204.671–5 (d) and (e) amended; interim 4246
(e) corrected 5484
(e) amended 11724
Comment time extended 9807
Amended 16115
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Amended; eff. 10–1–89 28420
(b) corrected 46901
204.672–2 (a) amended; interim 4247
Comment time extended 9807
(c)(6) amended 16115
Regulation at 54 FR 4247 and 54 FR 5484 confirmed 26205
204.672–5 (e) added; interim 4247
(e) corrected 5484
Comment time extended 9807
Amended 16115
Regulation at 54 FR 4247 confirmed 26205
Amended; eff. 10–1–89 28422
204.675 Added; interim 4247
Comment time extended 9807
Regulation at 54 FR 4247 confirmed 26205
204.675–1 Added; interim 4247
Comment time extended 9807
Regulation at 54 FR 4247 confirmed; amended 26205
204.675–2 Added; interim 4247

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205.101 Removed 53616
205.201 (S–70) removed.....53616
205.207 (e)(S–70) amended 53616
205.303 (a) and (S–70) amended.....7427
205.470 (a) amended 7427
(a) corrected 46902
207 Technical correction.....34996
207.103 (c)(6) added 11724
(i) amended; (S–70) added 53616
207.105 (b)(S–70)(xi) redesignated as (b)(S–70)(xii); new (b)(S–70(xi) added 7427
(b)(12)(iv) revised; (b)(17) added 11724
(b)(12)(v) added 31038
(b)(2) removed.....53616
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208 Technical correction.....32161
208.070 Correctly designated 14234
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208.7006–5 Existing text designated as (a); (b) added 21068
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208.7006–8 Added 26206
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208.7007–2 Introductory text, (a), (b), and (e) amended 26206
208.7007–3 Amended.....26206
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208.7008–2 (a) and (b) amended 26206
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208.7900 Corrected.....16438–T, 20592
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209 Technical correction.....32161, 34996
209.103 Regulation at 53 FR 20632 confirmed; (S–71) revised 53616
209.104–1 Added 30740
209.305 Amended 30740
211.002 Amended 20592
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212 Technical correction.....32161
212.204 (b) amended 30740

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213 Technical correction 32161
213.106 Removed 53616
213.204 Amended 30740
213.404 (a)(3) added 16116
213.505–2 (S–70)(1) amended 30740
213.505–3 Revised 16116
(b)(1) (i) and (ii) amended 30740
213.507 (a)(1)(ix) removed 7427
214 Technical correction 32161
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215.470 Removed 30740
215.608 (a)(1) added 16116
215.613 (a)(2) amended 7427
(j) amended 26207
215.801 Added 16116
215.804–3 Title amended; (a)(1) redesignated as (a)(1)(ii); new (a)(1)(i), (b) (1), (2), and (S–70) added 16116
(i) amended 20592
215.804–6 (g)(3) removed 31038
215.805–1 Added 16116
215.805–5 (i) and (j) removed 31038
215.805–70 Added 16117
215.806 (S–70)(7) amended 53616
215.806–2 Added 31038
Correctly removed 32975
215.806–3 Added 31038
Corrected 32975
215.807 (b) amended 11724
215.811–70 Amended 30740
215.811–72 (b) amended 11724
215.811–76 (b)(9) amended 20592
215.876 Added 11724
215.970–2 (a)(2), (3), and (6) through (9) amended 53616
216 Technical correction 32161
216.201 Added 7427
216.403–70 Added 26207
216.502 (S–70) introductory text amended 7427
216.506 Added 30741
217 Technical correction 32161
217.7201–1 Amended 20592, 30741
217.7201–2 (b) (2) and (3) amended 30741
217.7205 Added 7427
217.7205–1 Added 7427
217.7205–2 Added 7427
217.7205–3 Added 7427
217.7205–4 Added 7428
219 Technical correction 32161, 34996
219.201 (c) (3) and (9), (d)(2) (xxviii) and (xxix) added; (d)(2)(xxvii) and (S–70)(1) amended 20592

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(b)(5) added 26207
(a) amended 30741
219.202–1 (S–70)(11) added 26207
219.501–70 Amended 53616
219.502–3 (S–70)(1) amended 53616
219.502–72 (b)(4) and (5) amended; (b)(6) added 53616
219.505–70 Amended 53616
219.508 (S–72) redesignated as (S–72)(1); (S–72)(2) added 31038
219.670 Removed 7428
219.705–6 Added 26207
219.708 (c)(1) amended; (c)(2) added 26207
219.803 (c) (1) and (2) redesignated as (c)(S–70) (i) and (ii); (c)(S–71) added 26207
219.1005—219.1071 (Subpart 219.10) Added; interim 4247
Comment time extended 9807
Regulation at 54 FR 4247 confirmed 26207
219.1005 (S–70) added 26207
(b) revised 30741
(S–70) revised 53616
219.1070–2 (a) amended 26207
219.1071 (a) and (b)(1) amended 5484
219.7000 (a) introductory text, (1), (6) and (7) amended; (a)(8) added; interim 20592
(a) introductory text amended and last sentence designated as (a)(1); (a) (1) through (4), (7), and (8) redesignated as (a)(1) (i) through (iv), (v), and (vi); (a) (5) and (6) removed; new (a)(2) added 31038
219.7001 Amended 31038
219.7002 Amended 31038
219.7200 (a)(1)(vi) amended 53616
220.7000 Existing text designated as (a); (b) added 11724
222 Technical correction 32161
222.101–1 (S–74) amended 30741
222.101–3 Amended 53617
222.102–2 Added 30741
222.403—222.407 (Subpart 222.4) Revised 30741
222.1003—222.1014 (Subpart 222.10) Revised 30744
222.7200 (a) corrected 2258
223 Technical correction 32161
223.300 Added 30745
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223.7100—223.7105 (Subpart 223.71) Removed 7428
223.7200—223.7203 (Subpart 223.72) Added 30745
223.7300—223.7301 (Subpart 223.73) Added 30745
223.7401—223.7402 (Subpart 223.74) Added 30746
225 Technical correction 34996
225.001 Redesignated as 225.101 and amended 16117
225.101 Redesignated from 225.001 and amended 16117
225.105 (S–73) amended 53617
225.403 (c) added 31039
225.603 (b) (3) and (6) redesignated as (b)(5) and (c) 16117
225.901 Added; (d) redesignated from 225.904; (c) and (ii) redesignated from 225.903 53617
225.903—225.904 (Subpart 225.9) Heading revised 53617
225.903 Heading and (b) redesignated as 225.901 (c) and (ii) 53617
225.904 Redesignated as 225.901 (d) 53617
225.1003—225.1004 (Subpart 221.10) Added 53617
225.7000—225.7008 (Subpart 225.70) Heading revised 7428
225.7000 Amended 7428
225.7001 Amended 7428
225.7008 (a) and (b) revised; (d)(1) amended; (e) redesignated as (f); new (e) added; interim 7428
Regulation at 54 FR 7428 confirmed 26207
225.7011 Removed 22282
225.7012 Added 7428
225.7013 Added; interim 16117
Regulation at 54 FR 16117 confirmed; (b) heading and text amended; (c)(1)(iii) and (2) amended; (d)(1)(ii) added 53617
225.7104 (a)(2)(ii) amended 26207
Regulation at 53 FR 51560 confirmed 53619
225.7304 Regulation at 53 FR 51560 confirmed 53619
225.7306 Removed 11724
225.7310 (b)(4) amended 53617
225.7405 Amended 53617
226 Technical correction 34996

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226.7003 Amended 31039
226.7004 (a) amended 26207
227.473–2 Regulation at 53 FR 51560 confirmed 20592
Regulation at 53 FR 51560 confirmed 53619
228.101 Added 16117
228.101–1 Added 16117
228.101–3 Added 16118
231.205–1 Regulation at 53 FR 51561 confirmed 53619
231.205–38 (c)(S–70)(i) corrected 2258
Regulation at 53 FR 51561 confirmed 53619
232.103 Regulation at 53 FR 35511 confirmed 26207
232.111 Regulation at 53 FR 35511 confirmed 26207
232.501–1 Regulation at 53 FR 35512 confirmed; (a) amended 26207
232.502–1 Regulation at 53 FR 35512 confirmed 26207
(S–71)(4) amended 53619
232.502–4 Regulation at 53 FR 35512 confirmed 26207
232.503–15 Added 20592
232.905 Revised 20592
232.906 (a) amended 20593
233.204 Added 26207
234.005–70 Amended 11724, 26208
234.005–71 Existing text designated as (a); (b) added 11725
235.004 (a) introductory text revised; (S–70) added 20593
235.006 Added; interim 7429
235.010 Revised 53619
235.071 (c) revised 11725
235.7000 Amended 11725
235.7002 (a)(1) amended; (a)(3) revised 11725
235.7003 Heading, introductory text, and (g) amended 11725
235.7004 (a) revised; (c) through (h) redesignated as (d) through (i); new (c) added; new (d) and (e) amended 11725
235.7008 (a) and (e) amended 11725
235.7010 Added 11725
235.7100—235.7104 (Subpart 235.71) Removed 11725
236 Technical correction 32161
236.201 (a)(1)(S–70) and (c) (1) and (2) revised; (a)(1)(S–72) redesignated as (a)(1)(S–71) 30746

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236.206 Amended 30746
236.272 Amended 30746
236.402 (S–70) heading revised; (S–70)(1) heading and (S–70)(2) removed; (S)(70)(1) (i) and (ii) redesignated as (S–70) (1) and (2) 30746
236.513 Added 30746
236.602–1 (S–70) amended 30746
236.604 Revised 30746
237 Technical correction 7427
242 Technical correction 32161
242.302 (S–76) added 20593
242.7004 (b)(1) amended 53619
242.7006 (b) heading revised; (b) introductory text designated as (b)(1); (b)(1) through (3) and concluding text redesignated as (b)(1)(i) through (iii) and (2); new (b)(3) added 53619
242.7201—242.7209 (Subpart 242.72) Added 20593
242.7204 (c) amended 30747
244.301 Existing text designated as (a); (b) added 53620
245 Technical correction 32161
245.302–1 (a)(4) added 30747
245.407 (a) amended 53620
245.505–3 Added 20596
245.505–14 (a)(1)(vii) amended 7429
245.607–72 (e) corrected 46902
(e) corrected 46902
245.610–1 (a)(1)(viii) corrected 46902
247.305–70 Added 26208
247.570—247.574 (Subpart 247.5) Revised; interim 16118
Regulation at 54 FR 16111 comment time extended 24711
Regulation at 54 FR 16118 confirmed 53620
247.571 Corrected 22283
Amended 53620
247.573–1 (a), (b), (b)(1) and (2) revised; (c) redesignated as (e); new (c) and (d) added; new (e)(3) amended 53620
247.573–2 (a) and (c)(3)(i)(A) corrected 22283
(c)(2) amended 53620
247.574 Heading, (a), and (b) amended; (c) redesignated as (d); new (c) added 53620
252 Technical correction 32161, 34996
252.203–7001 Revised 16119
252.205–7000 Amended 7429, 46902

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252.208–7006 Regulation at 53 FR 29334 confirmed and revised 14655
Corrected 16438–T
(a) and (e)(3) corrected 20596
Introductory text amended 31039
252.209–7001 Regulation at 53 FR 20632 confirmed 53616
Revised 53620
252.213–7000 Removed 26208
252.213–7001 Redesignated as 252.247–7201 and amended 26208
252.215–7003 Amended 11725, 53620
252.219–7007 Amended 31039
252.219–7010 Amended 31039
252.219–7012 Added; interim 4248
(b) redesignated as (c); new (b) added; interim 7191
Comment time extended 9807
Regulation at 54 FR 4248 confirmed 26208
252.219–7013 Added; interim 4248
Comment time extended 9807
Regulation at 54 FR 4248 confirmed 26208
252.219–7014 Added; interim 4248
Comment time extended 9807
252.219–7015 Regulation at 54 FR 4248 confirmed 26208
252.222–7000 Removed 30747
252.222–7001 Removed 30747
252.223–7000 Removed 30747
252.223–7003 Removed 7429
252.223–7004 Added 30747
252.223–7005 Added 30747
252.225–7023 Amended 7429
252.225–7024 Added 7429
252.225–7026 Removed 22283
252.225–7027 Removed 22283
252.225–7028 Added 16120, 53621
252.227–7013 Amended 31039
252.228–7007 Added 16120
252.232–7007 Amended 53621
252.235–7002 Removed 11725
252.235–7005 Amended 11725–11726
252.236–7019 Added 30747
252.242–7001 Added 20596
252.247–7200 Removed 16120
252.247–7201 Redesignated from 252.213–7001 and amended 26208
252.247–7202 Added 16120, 53621
252.247–7203 Added 16121
Introductory text, (a)(6), and (d) amended 53621
252.247–7204 Added 53621

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252.271–7001 Added 17727
Amended 31039
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253 Editorial Note amended 20596, 30748
271 Added 11728
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202.101 Amended 19074
204.600 Added 19074
204.601 (a) and (d) amended 19074
204.602 Added 19074
204.603 Added 19074
204.603–70 Added 19074
204.670 Added 19074
204.670–1 Removed 19074
Redesignated from 204.670–2 and amended 19074
204.670–2 Redesignated as 204.670–1 and amended 19074
Redesignated from 204.670–4 and amended 19074
204.670–3 Removed 19074
204.670–4 Redesignated as 204.670–2 and amended 19074
204.671–1 Amended 19075
204.671–2 Revised 19075
204.671–3 Revised 19075
204.671–4 (c) and (e) removed; (a) introductory text revised; (a)(3) added; (b) and (d) redesignated as (c) and (b); (a)(1), (2), new (b) introductory text and (5), and new (c) amended 19075
204.671–5 Amended 19076
204.671–6 Amended 19076
204.672–1 Amended 19076
204.675–2 Amended 19076
204.7004–3 (a)(2)(v) amended 30156
204.7103–1 (b) amended 30156
204.7105 Revised 30156
204.7105–1 Revised 30156

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204.7105–2 Revised 30156
204.7105–3 Revised 30157
204.7106–2 (a) amended 30157
204.7108–3 (b) amended; interim 48732
205.203 Revised; interim 48732
206.302–3 Removed 30157
206.302–4 Added; interim 19076
206.302–5 Added 30157
206.304 Added; interim 19076
206.305 Added; interim 19077
208.405–1 (c) amended; interim 48732
208.7008–1 (a)(1) and (b)(1) amended 19077
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209.103 (S–70) introductory text and (1) revised; interim 48733
210.011 (S-70) removed 30157
214.202 Amended; interim 48733
214.202–1 Revised; interim 48733
214.207 Amended; interim 48733
215.401 Added; interim 48733
215.804–3 (b)(S–70) revised; interim 48733
215.805–5 (e)(6) revised; interim 48733
215.605 (A) added 19077
215.871 (d) and (e) removed 30157
216.403 (c)(S–70) removed; interim 48733
217.401—217.401–70 (Subpart 217.4) Added 19077
219.000 Amended 19077
Regulation at 55 FR 19077 confirmed 48732
219.001 Amended; interim 19077
Regulation at 55 FR 19077 confirmed 48732
219.201 Regulation at 55 FR 19077 confirmed 48732
219.201 (a) amended 19077
219.301–70 (b)(2) revised; (b)(3) amended; interim 19077
(b)(2) amended 30157
Regulation at 55 FR 19077 confirmed 48732
219.302 (S–70)(3) and (S–70)(4) amended; interim 19077
Regulation at 55 FR 19077 confirmed 48732
219.501 (g) amended 19077
Regulation at 55 FR 19077 confirmed 48732

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219.501–70 Amended 19078
Regulation at 55 FR 19078 confirmed 48732
219.702 (a) added; eff. 10–1–90 30157
219.704 (a)(1) added; (a)(3) amended 19078
(a)(3) corrected 39971
(a)(3) correctly amended 39971
Regulation at 55 FR 19078 confirmed 48732
219.705–2 Added; interim 19078
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219.705–4 (S–71) added 19078
Regulation at 55 FR 19078 confirmed 48732
219.706 (a) designation removed 19078
Regulation at 55 FR 19078 confirmed 48732
219.708 Amended 19078
(b)(1), (2), and (c)(3) added; (c)(1)(S-70) amended; eff. 10–1–90 30157
Regulation at 55 FR 19078 confirmed 48732
219.803 (a) and (c)(S-71) redesignated as (c) and (b); (c) amended; (c)(S-70) (i) and (ii) removed 19078
Regulation at 55 FR 19078 confirmed 48732
219.804–4 Added; interim 19078
Regulation at 55 FR 19078 confirmed 48732
219.7000 Amended 19078
Regulation at 55 FR 19078 confirmed 48732
222.7000 (a) amended; (b) revised 19078
223.7401—223.7402 (Subpart 223.74) Removed; interim 19078
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224.103 Revised 30158
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225.000 Revised; interim 48733
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225.102 Revised; interim 48734
225.102–70 Added; interim 48734
225.103 Revised; interim 48735
225.105 Revised; interim 48735

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225.105–70 Added; interim 48735
225.107 Revised; interim 48736
225.107–70 Added; interim 48736
225.107–71 Added; interim 48736
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225.302 (S–72)(1)(ii) amended 19078
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225.402 Revised; interim 48737
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225.600 Amended 19078
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225.603 (b)(1), (4)(i), and (5)(i) amended 19078
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225.7001 Amended; interim 30158
225.7002 Introductory text and (7) revised; (a)(5), (6), (b), (d)(1), and (2) amended 19079
225.7003 Amended 19079
225.7004 Amended 19079
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225.7011 Added; interim 48740
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225.7400—225.7406 (Subpart 225.74) Heading amended; interim 48740

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227.303 Added 19079
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223.371–3 Removed 67215
223.7202 (b) and (e) revised 60071
223.7203 Revised..... 60071
223.7500—223.7502 (Subpart 223.75) Revised 60071
225.000–70 (l) added; interim 9086
Regulations at 56 FR 9086 confirmed..... 60070
225.000–71 (b) table revised; interim 9086
Regulation at 56 FR 9086 confirmed..... 60070
225.102 (b)(ii) introductory text revised 67215
225.105–70 (i) added; interim 9086
Regulation at 56 FR 9086 confirmed..... 60070
225.109 (a)(S–70) amended; (d)(S–70) revised; interim..... 9086
Regulation at 56 FR 9086 confirmed..... 60070
225.302 (b)(i) revised 67215
225.401 Revised; interim 9086

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Regulation at 56 FR 9086 confirmed..... 60070
225.402 (a)(1)(i) revised; (C) redesignated as (c); new (c) introductory text revised; interim 9086
Regulation at 56 FR 9086 confirmed..... 60070
225.407 Revised; interim 9086
Regulation at 56 FR 9086 confirmed..... 60070
225.501 (a) amended 9087
225.603–70 (c)(4)(i) revised; interim 9087
(b)(7) amended 15164
Regulation at 56 FR 9087 confirmed..... 60070
225.703 Revised 67215
225.872–7 Amended 67215
225.1003—225.1004 (Subpart 225.10) Removed 67215
225.7000 Regulation at 55 FR 30158 confirmed 9089
225.7001 Regulation at 55 FR 30158 confirmed 9089
225.7002 (c)(7) removed..... 9090
225.7008 Regulation at 55 FR 30158 confirmed 9089
225.7012 Regulation at 55 FR 30158 confirmed 9089
225.7012–1 Regulation at 55 FR 30158 confirmed 9089
225.7012–2 Regulation at 55 FR 30158 confirmed 9089
(a), (b)(1), and (2) introductory text revised 9090
225.7012–3 Regulation at 55 FR 30159 confirmed 9089
225.7012–4 Regulation at 55 FR 30159 confirmed 9089
225.7012–5 Regulation at 55 FR 30159 confirmed 9089
225.7014 Revised 15164
225.7014–1 Added 15164
225.7014–2 Added 15164
225.7014–3 Added 15164
225.7014–4 Added 15164
225.7015 Added 15165
225.7015–1 Added 15165
225.7015–2 Added 15165
225.7015–3 Added 15165
225.7016 Added; interim 15165
Added 67215
225.7016–1 Added; interim 15165
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225.7016–2 Added; interim 15165

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Added 67215
225.7016–3 Added; interim 15165
Added 67215
225.7016–4 Added 67215
225.7016–5 Added 67215
225.7017 Added 64212
225.7017–1 Added 64212
225.7017–2 Added 64212
225.7017–3 Added 64212
225.7017–4 Added 64212
225.7017–5 Added 64212
225.7101 Amended 67216
225.7103 (h) added 67216
225.7303–2 (a)(2)(iii), (b) and (c) revised 67216
225.7304 (c)(1)(iii) revised; interim 34031
(c)(2) and (3) revised 46520
(c)(2) corrected 56116
226.7000 Revised 67216
226.7001 Revised 60071
226.7003 Revised 60071
226.7012 Revised 67216
226.7100—226.7103 (Subpart 226.71) Regulation at 55 FR 48742 confirmed 15167
Removed 60071
227.403–77 (a)(1)(iii)(B) revised; (a)(1)(iii)(C) added 67216
227.7004 (c)(5) revised 67216
228.311 Added 9087
228.311–1 Added 9087
228.311–2 Added 9087
230.7103 (a)(2) amended 15165
231.100 Added 15165
231.100–70 Added 15165
231.201 Removed 15165
231.205–1 Removed 15165
231.205–18 Revised 46520
Revised 67217
231.205–38 Removed 15165
231.7003–1 (a)(2)(i) revised 67217
232.412 (S–72) added 37965
232.412–70 (c) added 67217
232.501–1 (a) amended 31342
Technical correction 38174
(a)(i) revised 67217
232.501–2 Revised 31342
Technical correction 38174
232.502–1 (S–71)(2)(ii)(C) removed; (S–71)(2)(ii)(D) redesignated as (S–71)(2)(ii)(C); (S–71)(2)(iii) revised 9087
(S–71) amended 31342
Technical correction 38174

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(S–71) (a)(7) and table and (b)(5) revised 67217
232.502–4 (S–71), (S–72) and (S–73) revised; (S–74) and (S–75) removed 31342
Technical correction 38174
(b) removed 67217
232.502–4–70 (b) revised; (c) added 67217
232.903 Added 60072
232.905–70 Added 60072
233.104 (Subpart 233.1) Added 67218
233.104 (Subpart 233.104) Added; interim 45832
233.104 (a)(3)(i) corrected 49509
Regulations at 56 FR 45832 and 49509 confirmed 60070
233.211 Added 52440
233.211 Added; interim 67219
235.006 Revised 60072
237.102 Added; interim 43987
Added 67220
237.170 Added; interim 43987
Added 67220
237.170–1 Added; interim 43987
Added 67220
237.170–2 Added; interim 43987
Added 67220
237.170–3 Added; interim 43987
Added 67220
237.202 Redesignated from 237.204 15165
237.204—237.206 (Subpart 237.2) Heading revised 15165
237.204 Redesignated as 237.202 15165
237.270 Added 15165
239.7402 (a)(3) amended 67220
242.1005 Revised 46521
Revised 67220
242.1006 Revised 46521
Revised 67220
242.1007 Revised 46521
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242.1008 Revised 46521
242.1404–1 Added 67220
243 Technical correction 26719
243.107 Added; interim 24031
Regulation at 56 FR 24031 eff. 5–14–91; interim 28345
Revised 60072
243.107–70 Redesignated as 243.170; new 243.170 added 67220
243.170 Redesignated from 243.107–70 67220

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245.104 Amended 67220
245.401 Revised 9087
245.405 (c) removed; (d), (e) and (f) redesignated as (c), (d) and (e); (b), new (c), new (d) and new (e) revised; interim 9087
245.603–70 (1) revised 9087
(a)(1) revised 67220
247.271–4 (b)(9) revised 60072
249 Technical correction 26719
249.102 Revised; interim 24031
Regulation at 56 FR 24031 eff. 5–14–91; interim 28345
249.102 Revised 60072
(a)(5) added 67220
249.7001 (b)(5) revised 67220
249.7002 Added 67220
249.7003 Redesignated as 249.7004; new 249.7003 added; interim 24031
Regulation at 56 FR 24031 eff. 5–14–91; interim 28345
Revised 60072
249.7004 Redesignated from 249.7003; interim 24031
Regulation at 56 FR 24031 eff. 5–14–91; interim 28345
250.103 Removed 60072
250.201–70 (b)(2) revised 67221
250.303 (6) revised 67221
252 Technical correction 26719
252.203–7001 Amended; interim 9087
252.203–7002 Amended 9088
252.203–7004 Added; interim 24142
252.208–7005 Regulation at 55 FR 48746 confirmed 15167
252.211–7000 Added; interim 18619
252.211–7001 Added; interim 18619
252.211–7002 Added; interim 18620
252.211–7003 Added; interim 18621
252.211–7004 Added; interim 18621
252.211–7005 Added; interim 18622
Removed; interim 67221
252.211–7006 Added; interim 18622
252.211–7007 Added; interim 18622
252.211–7008 Added; interim 18622
252.211–7009 Added; interim 18623
252.211–7010 Added; interim 18623
252.211–7011 Added; interim 18623
252.211–7012 Added; interim 18623
252.211–7013 Added; interim 18624
252.211–7014 Added; interim 18624
252.211–7015 Added; interim 18624
252.211–7016 Added; interim 18625
252.211–7017 Added; interim 18625

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252.211–7018 Added; interim 18625
252.211–7019 Added; interim 18626
Amended 67221
252.211–7020 Added; interim 18626
252.211–7021 Added; interim 18627
252.215–7004 Added; interim 15166
252.219–7012 Removed 9090
252.219–7013 Removed 9090
252.219–7014 Removed 9090
252.219–7016 Removed; interim 15166
Removal at 56 FR 15166 confirmed 60070
252.223–7000 Removed 67221
252.223–7004 Removed; new 252.223–7004 redesignated from 252.223–7005; revised; interim 67221
252.223–7005 Redesignated as 252.223–7004; interim 67221
252.223–7006 Added 60072
252.223–7007 Added 60073
252.223–7500 Revised 60073
252.225–7000 Regulation at 55 FR 48746 confirmed 15167
252.225–7001 Revised; interim 9088
Regulation at 55 FR 48746 confirmed 15167
Regulation at 56 FR 9088 confirmed 60070
252.225–7003 Regulation at 55 FR 48747 confirmed 15167
252.225–7005 Revised; interim 9088
Regulation at 55 FR 48747 confirmed 15167
Regulation at 56 FR 9088 confirmed 60070
252.225–7006 Revised; interim 9089
Regulation at 55 FR 48747 confirmed 15167
Regulation at 56 FR 9089 confirmed 60070
(c)(1)(i) revised 67221
252.225–7008 Amended; interim 9089
Regulation at 55 FR 48748 confirmed 15167
Regulation at 56 FR 9089 confirmed 60070
252.225–7009 (f)(2)(iv) amended 67221
252.225–7014 Amended; interim 9089
Regulation at 56 FR 9089 confirmed 60070
252.225–7018 Regulation at 55 FR 48749 confirmed 15167
252.225–7020 Regulation at 55 FR 48749 confirmed 15167

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252.225–7021 Regulation at 55 FR 48749 confirmed 15167
252.225–7023 Regulation at 55 FR 30160 confirmed 9089
252.225–7025 Revised 15166
Regulation at 55 FR 48749 confirmed 15167
252.225–7026 Revised 15166
Regulation at 55 FR 48749 confirmed 15167
252.225–7029 Regulation at 55 FR 48749 confirmed 15167
Added 67221
252.225–7030 Regulation at 55 FR 48750 confirmed 15167
252.225–7031 Added 15166
252.225–7032 Added 15166
252.225–7033 Added; interim 15166
252.225–7034 Added 64212
252.226–7002 Regulation at 55 FR 48750 confirmed 15167
Removed 60073
252.228–7001 (i)(2)(ii) amended 67221
252.231–7000 Revised 15166
252.232–7004 Regulation at 55 FR 48750 confirmed 15167
Added 67221
252.232–7005 Added 67221
252.232–7007 (a) revised 31343
Technical correction 38174
252.232–7008 Added 31343, 37965
Technical correction 38174
252.234–7000 Amended 67222
252.237–7001 Added; interim 43987
Corrected 49509
252.237–7019 Added; interim 67222
252.239–7000 (a)(1) amended 67222
252.247–7110 Revised 60073
252.249–7001 Added; interim 24031
Regulation at 56 FR 24031 eff. 5–14–91; interim 28345
Revised 60074
Added 67222
253.204–70 (c)(3), (d)(5)(i)(H) and (xi)(B)(*1*) amended; (c)(4)(vi) revised 67222
(c)(4)(vii) and (e)(3)(ii) revised 67223
Chapter 2 Appendix N amended 9089
Appendix N regulation at 55 FR 48750 confirmed 15167
Appendix G amended 67223

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201.603–2 Added 14990
202 Technical correction 45422
202.101 Amended 42629
203.7100—203.7108 (Subpart 203.71) Added 14990
204 Technical correction 45422
204.402 Revised; interim 14992
Regulation at 57 FR 14992 confirmed 42629
204.404–70 Revised 14992
204.670–2 (c) redesignated as (d); new (c) added 53598
204.670–5 (d) amended 42629
204.7202–1 (c)(1), (4) and (5) amended 53598
204.7202–2 Revised 42629
204.7203 (d) amended 53598
204.7204–1 (a)(4) and (b) amended 53598
206.302–1 (a)(2)(i) introductory text revised 14992
206.302–5 (c)(ii) amended 14992
206.302–5 (b) added 53598
208 Technical correction 45422
208.7203 (b) amended 42629
209.406–1 Revised 14992
209.406–4 Removed 14992
210 Technical correction 45422
210.002 (c) redesignated as (e) 42629
211.7003–1 (b)(4) amended; interim 4741
211.7004–1 (l)(3)(ii) amended; (p)(2) introductory text, (i), (ii) and (iii) revised; interim 4741
211.7004–6 (a)(3) amended; interim 4741
211.7005 Revised; interim 4741
213.000 Added 53599
213.101 (Subpart 213.1) Added 53599
214 Technical correction 45422
214.406–3 Revised 42629
214.503–1 (a)(4) removed 53599
215 Technical correction 45422
215.605 (c)(ii)(A)(*1*) and (B)(*2*) amended 14992
215.804–1 Removed 14992
Added 42629
215.804–3 Introductory text removed 42629
215.804–3 (i)(iii) introductory text amended 53599
215.804–8 (a) removed 53599
215.870–6 (a) amended 53599

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215.975 (b) table amended 53599
215.7000—215.7006 (Subpart 215.70) Added; interim 41422
215.7000—215.7006 (Subpart 215.70) Removed 53599
Reinstated 55472
216 Technical correction 45422
216.501 (a)(i)(B) amended 42630
217.102–3 Added 53599
217.103–1 (a)(iii), (b)(ii) heading, (A), (iv)(B), (C), (D), (vi)(A)(*1*), (B) and (vii) revised 14992
217.103–1 (a)(iii) revised 53599
219 Technical correction 45422
219.508 (d) amended 42630
219.703 Revised 42630
219.808 Added; interim 38287
219.808–1 Added; interim 38287
219.811 Added; interim 38287
219.811–1 Added; interim 38287
219.811–3 Added; interim 38287
219.1007 Amended 42630
219.7100 Amended; interim 47275
219.7102 (b) and (d) revised; interim 47275
219.7103–1 (a) revised; interim 47275
219.7104 (b) removed; (c), (d) and (e) redesignated as (b), (c) and (d); new (d) introductory text revised; interim 47276
219.7107 Added; interim 47276
222.7000 (a) amended 14993
222.7100—222.7102 (Subpart 222.71) added; interim 52593
223 Technical correction 45422
223.301 Removed 42630
223.570—223.570–4 (Subpart 223.5) Revised; interim 32737
223.7001—223.7002 (Subpart 223.70) Added; interim 14993
223.7002 (a) introductory text amended; (b) introductory text revised 53599
225 Technical correction 45422
225.102 (a)(3)(A) amended 42630
225.109 (d)(iii) revised 42630
225.302 (b)(ii) amended 42630
225.407 (a)(2)(A) amended 42630
225.770 Added; interim 29042
225.770–1 Added; interim 29042
Amended 42630
225.770–2 Added; interim 29042
225.770–2 Revised 53599
225.770–3 Added; interim 29042
225.770–3 Revised 53599

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225.770–4 Added; interim 29042
225.770–4 Revised 53599
225.770–5 Added 53599
225.802–71 Added 42630
225.870–2 (a) amended 42630
225.870–4 (a) amended 42630
225.872–1 (b) amended 53599
225.872–4 (b) and (c) revised 42630
225.873 Added 53599
225.873–1 Added 53599
225.873–2 Added 53599
225.873–3 Added 53600
225.7002–1 (a) introductory text revised 14993
225.7004 Revised; interim 14993
225.7004–1 (a) table amended; (b) redesignated as (c); new (b) added 14993
225.7004–2 Heading, (a) and (b)(2)(i) revised; (b)(3) added 14993
225.7004–3 Revised 14993
225.7004–5 Revised 14993
225.7012–1 (a) introductory text revised 14994
225.7012–4 (a)(1) revised 14994
225.7014–1 Revised; interim 14994
Regulation at 57 FR 14994 confirmed 42629
225.7014–2 Revised; interim 14994
Regulation at 57 FR 14994 confirmed 42629
225.7014–3 Revised; interim 14994
Regulation at 57 FR 14994 confirmed 42629
225.7016 Regulation at 56 FR 67215 confirmed 14990
225.7016–1 Regulation at 56 FR 67215 confirmed 14990
225.7016–2 Regulation at 56 FR 67215 confirmed 14990
225.7016–3 Regulation at 56 FR 67215 confirmed 14990
225.7016–4 Regulation at 56 FR 67215 confirmed 14990
225.7016–5 Regulation at 56 FR 67215 confirmed 14990
225.7017 Added; interim 14994
225.7017–1 Added; interim 14994
225.7017–2 Added; interim 14994
225.7017–3 Added; interim 14994
225.7017–4 Added; interim 14994
225.7017–4 (a) and (b) revised 53600
225.7303–2 (a)(2)(i)(C) revised 42631
(c) introductory text revised 53600

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226 Technical correction 45422
226.7008 (b) amended 42631
227 Technical correction 45422
227.304–1 Amended 53600
227.402–71 (a) amended 42631
227.403–70 (b)(1) revised 53600
228 Technical correction 45422
228.102–1 Introductory text and (1) through (4) added 42631
228.106 Added 42707
228.106–4 Added 42707
228.106–4–70 Added 42707
228.106–6 Added 42707
228.106–7 Added 42707
228.370 (d) amended 42631
231 Technical correction 45422
231.3 Removed 42631
231.205–6 Added 53600
231.205–18 (c)(1)(iii)(*1*) redesignated as (c)(1)(i)(C)(*1*); (c)(2) added 53600
231.603 Revised 42631
231.703 Revised 42632
232 Technical correction 45422
232.111 Added; interim 3358
232.111–70 Added; interim 3358
232.173 Added; interim 3359
232.173–1 Added; interim 3359
(a) amended 42632
232.173–2 Added; interim 3359
232.173–3 Added; interim 3359
232.173–4 Added; interim 3359
(a), (c), (d) and (g)(1) amended; (e) revised 42632
232.173–5 Added; interim 3359
Introductory text amended 42632
232.503–15 (d) amended 42632
232.970 Added 42707
232.970–1 Added 42707
232.970–2 Added 42708
235.002 Revised 14994
235.006 (b)(1)(C)(*1*)(*iii*) revised 14994
235.015–71 (i)(2) amended 53601
235.017 Added 14994
235.017 (a)(2) amended 53601
236 Technical correction 45422
236.570 (b)(4) amended 42632
237 Technical correction 45422
237.106 (2) revised 14994
237.170–2 (b) amended 14995
237.170–3 Amended 14995
237.203–70 (a)(3) and (4) amended 42632
239 Technical correction 45422
239.001 Revised 42632

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239.7411 (b)(2) and (c)(3) amended 42632
239.7500—239.7501–2 (Subpart 239.75) Added; interim 14995
Regulation at 57 FR 14995 confirmed 42629
242 Technical correction 45422
242.205 (1)(iii) revised 53601
242.302 (a)(9) added; (a)(11) removed 53601
242.771 Added 53601
242.771–1 Added 53601
242.771–2 Added 53601
242.771–3 Added 53601
242.1005—242.1008 (Subpart 242.10) Removed 53601
242.7202 (d) revised 42632
245 Technical correction 45422
245.302–7 Added 14995
245.310–70 Revised 42632
245.7002 Revised 42632
245.7308 (a) amended 42633
245.7308 (a) amended 53601
249.402–4 Added; interim 534
Removed 6076
252 Technical correction 45422
252.201–7000 Amended 42633
252.203–7003 Added 14995
252.204–7000 Amended 14996
252.204–7003 Added; interim 14996
Regulation at 57 FR 14996 confirmed 42629
252.211–7005 Removal at 56 FR 67221 confirmed 14990
252.211–7021 (b)(1), (2) and (3) amended; interim 4743
252.215–7004 Added; interim 41423
Removed 53601
Reinstated 55472
252.217–7001 Amended 42633
252.219–7007 Added; interim 38287
252.219–7008 Added; interim 47276
252.222–7001 Added; interim 52594
252.223–7004 Revised; interim 32737
252.223–7005 Added; interim 14996
Revised 53601
252.225–7003 Amended 42633
252.225–7016 Removed; interim 14996
252.225–7017 Revised; interim 14996
252.225–7022 Correctly designated 42633
252.225–7023 Amended; interim 14996
Regulation at 57 FR 14996 confirmed 42629
252.225–7029 Regulation at 56 FR 67221 confirmed 14989

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252.225–7030 Added; interim 14996
Revised 53601
252.225–7031 Added; interim 29042
252.225–7032 Added 53602
252.228–7003 (a)(4), (b)(2) and (e) amended 42633
252.228–7006 Added 42708
252.232–7001 Amended 42633
252.232–7005 (b) revised 53602
252.232–7006 Added; interim 3359
Revised 42633
252.237–7019 Regulation at 56 FR 67222 confirmed 14990
(a)(1) and (b) revised 14996
Amended 42633
252.242–7001 (c) amended 42633
252.243–7000 Amended 42633
252.247–7022 Amended 42633
252.270–7000 Removed 41423
253 Technical correction 45422
253.204–70 (b)(5)(ii)(A), (c)(4)(iv)(A), (B), (C) and (ix)(B)(*2*) revised 42633
253.204–71 (a)(3) added 53602
270 Removed; interim 41423
Chapter 2 Appendixes B, and D amended 42634
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Appendixes F and G amended 53602

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201 Technical correction 32416
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201.603–2 Revised; interim 28463
202 Authority citation revised 37868
203 Authority citation revised 37868
204 Authority citation revised 37868
205 Authority citation revised 37868
206 Technical correction 32416
Authority citation revised 37868
206.302–1 (a)(2)(i) introductory text revised; interim 28463
206.302–5 (c)(ii) revised; (c)(iii) added; interim 28463
207 Technical correction 32416
Authority citation revised 37868

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207.105 (b)(17)(A) revised; (b)(17)(B) redesignated as (b)(17)(C); (b)(2)(v) and new (b)(17)(B) added; interim 28463
(b)(15) added 32061
208 Authority citation revised 37868
209 Technical correction 32416
Authority citation revised 37868
209.101 Added; interim 28464
209.104–1 Revised; interim 28464
209.104–70 Revised; interim 28464
209.106–2 (a)(iii) added; interim 28464
209.406–2 Added; interim 28464
209.406–4 Added; interim 28464
210 Authority citation revised 37868
210.002–71 Added 32062
211 Authority citation revised 37868
212 Authority citation revised 37868
213 Authority citation revised 37868
214 Authority citation revised 37868
215 Authority citation revised 37868
Technical correction 18448, 32416
215.605 (a) revised; (b) added; interim 28465
215.870 Removed 32062
215.870–1 Removed 32062
215.870–2 Removed 32062
215.870–3 Removed 32062
215.870–4 Removed 32062
215.870–5 Removed 32062
215.870–6 Removed 32062
215.7000—215.7006 (Subpart 215.70) Removed 16782
216 Authority citation revised 37868
217 Technical correction 32416
Authority citation revised 37868
217.103–1 (a)(iii) revised; interim 28465
219 Authority citation revised 37868
219.502–1 Revised; interim 28465
219.502–2 Revised; interim 28465
219.602–1 Revised; interim 28465
219.602–70 Added; interim 28465
219.702 (a)(i)(A)(*1*) revised; interim 28465

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(a)(i)(A)(*1*) correctly designated 32416
219.703 (a) introductory text revised; interim 28465
219.705–2 Revised; interim 28465
219.808–1 (b)(i) revised; interim 28465
219.1005 (a) revised; interim 28466
219.1006 Revised; interim 28466
219.7102 Introductory text revised; interim 28466
219.7106 (a)(1)(ii) amended; (c) redesignated as (d); new (c) added; interim 28466
222 Technical correction 32416
Authority citation revised 37868
222.1308 Added; interim 28466
223 Technical correction 32416
Authority citation revised 37868
223.7000 Added; interim 28466
223.7002 (a)(1) revised; interim 28466
223.7100—223.7103 (Subpart 223.71) Added; interim 28466
224 Authority citation revised 37868
225 Authority citation revised 37868
225.702 (1) revised; interim 28467
225.770–1 Revised; interim 28467
225.901 (Subpart 225.9) Removed; interim 28467
225.7002–2 (e) and (f) revised; interim 28467
225.7002–4 (a) and (c) introductory text revised; interim 28467
225.7003–2 Revised; interim 28467
225.7005 Removed; interim 28467
225.7014–1 Revised; interim 28467
225.7014–2 Revised; interim 28467
225.7014–3 Revised; interim 28467
225.7015–1 Revised; interim 28467
225.7015–3 Revised; interim 28467
225.7017–1 Revised; interim 28468
225.7017–2 Revised; interim 28468
225.7018 Added; interim 28468
225.7018–1 Added; interim 28468
225.7018–2 Added; interim 28468
225.7018–3 Added; interim 28468
225.7019 Added; interim 28468
225.7019–1 Added; interim 28468
225.7019–2 Added; interim 28468
225.7019–3 Added; interim 28468
(a)(2) corrected 32416
225.7019–4 Added; interim 28468

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225.7102 (e) removed; (f) redesignated as (e); interim 28468
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225.7104 Revised; interim 28468
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215.804–6 (b)(2)(A) amended; interim 27669
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204.7102 (b) introductory text revised 34468
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204.7104–1 (a)(3) added; (b)(1) introductory text and (i) revised 34468
204.7104–2 (e)(5) amended; (e)(7) and (8) redesignated as (e)(8) and (9); new (e)(7) added 34468
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208 Authority citation revised 40106
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225.7016–2 Revised; interim....19533
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225.7016–3 Revised; interim....19533
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225.7103 (a) and (c) introductory text amended....61597
225.7200—225.7203 (Subpart 225.72) Regulation at 59 FR 28469 confirmed....29497
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225.7202 Amended....29499
225.7307–1 (f) amended....61597
225.7307–2 (b) amended....61597
226 Authority citation revised....29497, 40106
226.103 (Subpart 226.1) Added....61597
226.7000 Regulation at 59 FR 27672 confirmed....29496
226.7100—226.7103 (Subpart 226.71) Regulation at 59 FR 12192 confirmed....29496
226.7100 Revised; interim....5870
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226.7104 Added; interim....5870
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226.7200 (a) amended....29499
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227 Authority citation revised....33471, 40106
227.400 (Subpart 227.4) Revised....33471
227.7100—227.7108 (Subpart 227.71) Added....33471
227.7101 (b) removed; (c) redesignated as (b)....61598
227.7102–3 (a), (b) and (c) amended....61598
227.7103–6 (b)(2) corrected....41157
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227.7104 Heading and (a) amended....61598
227.7200—227.7207 (Subpart 227.72) Added....33482
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228.102–1 Introductory text revised....29499
228.171 Added; interim....45377
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228.171–1 Added; interim....45377
228.171–2 Added; interim....45377
228.171–3 Added; interim....45377
229 Authority citation revised....40106
230 Authority citation revised....40106
231 Authority citation revised....29497, 40106
231.205–6 (a)(2) added; interim....2331
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231.205–70 Added; interim....1748
(b)(4) amended....29499
231.301 Regulation at 60 FR 2331 confirmed....61591
231.303 (3) added....2331
Regulation at 59 FR 26144 confirmed....29496
231.603 Introductory text, (1) through (10), (11) introductory text, (i), (ii) and (12) through (15) redesignated as (1) introductory text, (i) through (x), (xi) introductory text, (xi)(A), (B) and (xii) through (xv); new (2) added; interim....2331
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231.703 Revised....2331
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231.7000—231.7002–6 (Subpart 231.70) Removed....61598
232 Authority citation revised....29497, 40106
232.108 (1)(i) amended....29499
232.170 (a) and (b) amended....61598
232.171 (a)(1), (b)(1) and (3) amended....61598
232.173–1 (b) amended....61598
232.173–5 Introductory text amended....61598
232.501–2 (a) amended....61598
232.503–6 (b) added....29499
232.617 Amended....61598
233 Authority citation revised....40106

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234 Authority citation revised 40106
234.001 Added 61598
235 Authority citation revised 4570, 29497, 40106
235.001 Revised 29499
235.006 (a) and (b)(iv) added; interim 4570
(b)(i)(C)(*1*)(*iii*) revised 29500
Regulation at 60 FR 4570 confirmed 61591
235.010 Revised 29500
235.015–70 (d)(3)(ii) amended 29500
235.015–71 (i)(2) amended 61598
235.017–1 Added; interim 13077, 29500
Correctly removed 40107
Regulation at 60 FR 13077 confirmed 61591
Revised 61598
235.071 (c) and (d) added 29500
235.7002 (a)(2) revised 15690
(a)(1) and (2) amended 61598
235.7003 (d)(9) added 15690
(b)(1) revised 61599
235.7004–1 (b) amended 15690
235.7004–2 (b) amended 15690
235.7004–3 (c) amended 15690
235.7006 (a) and Exhibit amended; (c) redesignated as (d); new (c) added 15690
Amended 61599
236 Authority citation revised 40106
237 Authority citation revised 29497, 40106
237.102–70 Added 61599
237.104 (b)(ii) revised; interim 2888
Regulation at 60 FR 2888 confirmed 61591
(b)(ii) introductory text and (B) 61599
237.109 Added 61599
237.171 Removed 61599
237.171–1 Removed 61599
237.171–2 Removed 61599
237.270 Removed 61599
237.270–1 Removed 61599
237.270–2 Removed 61599
237.270–3 Removed 61599
237.270–4 Removed 61599
237.7204 Amended 61599
237.7302 Amended 29500
239.7303 (b) revised 61599
237.7400—237.7402 (Subpart 237.74) Regulation at 59 FR 36089 confirmed 29496

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237.7400 Amended 29500
237.7401 (c) amended; (d) added 29500
237.7402 Amended 29500
239 Authority citation revised 40106
241 Authority citation revised 40106
242 Authority citation revised 29497, 40106
242.302 (a)(7) added 29500
242.705–1 (b)(3) and (4) removed 61599
242.705–2 (b)(2)(ii) and (iv) amended 61599
242.770 Removed 61599
242.770–1 Removed 61599
242.770–2 Removed 61599
242.770–3 Removed 61599
242.770–4 Removed 61599
242.770–5 Removed 61599
242.770–6 Removed 61599
242.771–3 (b)(2) and (c) amended 61599
242.1104 Revised 29500
242.1202 Added; interim 1749
242.1204 Added; interim 1749
242.7003–1 Revised 61599
242.7206 Introductory text revised 61599
242.7302 (a) revised; (d) added 29500
242.7500—242.7503 (Subpart 242.75) Added 29500
243 Authority citation revised 34468, 40106
243.171 Added 34470
244 Authority citation revised 29497, 40106
244.202—244.202–2 (Subpart 244.2) Added 29501
245 Authority citation revised 29497, 40106
245.608–70 (a)(3) revised 29501
246 Authority citation revised 33145, 40106
246.101 Amended; interim 33145
Regulation at 60 FR 33145 confirmed 61591
246.102 (4) amended; interim 33145
Regulation at 60 FR 33145 confirmed 61591
246.202–3 Revised; interim 33145
Regulation at 60 FR 33145 confirmed 61591
Redesignated as 246.202–4 61599

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246.202–4 Redesignated from 246.202–3; (i) and (ii) redesignated as (1) and (2) 61599
246.204 Revised; interim 33145
Regulation at 60 FR 33145 confirmed 61591
Removed 61599
246.704 (4) revised; interim 33145
246.704 Regulation at 60 FR 33145 confirmed 61591
(2) and (4) amended 61599
246.770–1 (f)(2)(i) revised 61599
247 Authority citation revised 29497, 40106
247.105 Regulation at 59 FR 27674 confirmed 29497
247.270–5 Regulation at 59 FR 50852 confirmed 29496
247.305–70 Revised 29501
247.571 (c) revised; (d) removed; (e) redesignated as (d) 29501
247.572–1 (a) revised 61599
247.572–2 (a)(4) and (5) amended; (a)(6) added 61600
247.573 (d) revised 29501
248 Authority citation revised 40106
249 Authority citation revised 29497, 40106
249.7002 (b) introductory text and (2) amended 61600
249.7003 Regulation at 59 FR 27674 confirmed 29497
(b)(1), (2) introductory text and (3) introductory text amended 29501
250 Authority citation revised 40106
250.201–70 (b)(1) and (2) amended 61600
251 Authority citation revised 29497, 40106
251.102 (e) introductory text revised; (f) added 29501
251.105 Added 29501
252 Authority citation revised 29497, 33471, 34471, 35668, 40106, 40107
252.203–7000 Amended 61600
252.203–7001 Amended 61600
252.203–7003 Removed 61600
252.204–7001 Introductory text amended 61600
252.209–7000 Amended 61600
252.209–7001 Regulation at 59 FR 51131 confirmed 29496

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252.209–7003 Regulation at 59 FR 51131 confirmed 29496
252.209–7004 Regulation at 59 FR 51131 confirmed 29496
(b)(5) amended 29502
252.209–7005 Redesignated from 252.209–7007 and amended 61600
252.209–7007 Added; interim 13074
Redesignated as 252.209–7005 61600
252.210–7000 Redesignated as 252.211–7003 61600
252.210–7001 Redesignated as 252.211–7001 61600
252.210–7002 Redesignated as 252.211–7002 61600
252.210–7003 Redesignated as 252.211–7000 61600
252.210–7004 Redesignated as 252.211–7004 61600
252.211–7000 Removed; redesignated from 252.210–7003; introductory text revised 61600
252.211–7001 Removed; redesignated from 252.210–7001; introductory text revised 61600
252.211–7002 Removed; redesignated from 252.210–7002; introductory text revised 61600
252.211–7003 Removed; new 252.211–7003 redesignated from 252.210–7000; introductory text revised 61600
252.211–7004 Removed; redesignated from 252.210–7004; introductory text revised 61600
252.211–7006 Removed 61600
252.211–7007 Removed 61600
252.211–7008 Removed 61600
252.211–7009 Removed 61600
252.211–7010 Removed 61600
252.211–7011 Removed 61600
252.211–7012 Removed 61600
252.211–7013 Removed 61600
252.211–7014 Removed 61600
252.211–7015 Removed 33490, 61690
252.211–7016 Removed 33490, 61600
252.211–7017 Removed 33490, 61600
252.211–7018 Removed 61600
252.211–7019 Removed 61600
252.211–7020 Removed 61600
252.211–7021 Amended 33490
Removed 61600
252.212–7000 Added 61600
252.212–7001 Added 61601
252.215–7001 Removed 61601

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252.217–7026 Amended; heading revised 61601
252.219–7001 Regulation at 59 FR 24959 confirmed 29497
Amended 29502
252.219–7002 Regulation at 59 FR 24959 confirmed 29497
Amended 29502
Suspended 54955
252.219–7003 Regulation at 59 FR 27672 confirmed 29496
Amended; heading revised 61601
252.219–7004 Amended 35668
252.219–7005 Amended 61601
252.219–7006 Regulation at 59 FR 24959 confirmed 29497
Amended 29502
252.219–7008 Regulation at 59 FR 27672 confirmed 29496
252.219–7009 Removed; interim 40107
Regulation at 60 FR 40107 confirmed 61591
252.223–7006 Amended; introductory text revised 13076
Regulation at 60 FR 13076 confirmed 61591
Amended 61601
252.225–7001 Regulation at 59 FR 1290 confirmed 29497
252.225–7006 Regulation at 59 FR 1290 confirmed 29497
252.225–7007 Regulation at 59 FR 1290 confirmed 29497
252.225–7009 Amended 29502
252.225–7010 Regulation at 59 FR 1291 confirmed 29497
Amended 29502
252.225–7011 Added; interim 34471
Regulation at 60 FR 34471 confirmed 61591
252.225–7012 Amended 61601
252.225–7014 Amended 61602
252.225–7016 Amended 61602
252.225–7017 Amended; interim 19534
Regulation at 60 FR 19534 confirmed 61591
252.225–7026 Regulation at 59 FR 28474 confirmed 29497
Amended 29502, 61602
252.225–7029 Revised; interim 19534
Regulation at 60 FR 19534 confirmed 61591
252.225–7035 Regulation at 59 FR 1291 confirmed 29497
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252.225–7036 Regulation at 59 FR 1291 confirmed 29497
Amended 29502
252.225–7037 Regulation at 59 FR 1292 confirmed 29497
Amended 29503
252.225–7038 Regulation at 59 FR 11729 confirmed 29497
252.225–7039 Regulation at 59 FR 19146 confirmed 29497
252.225–7040 Added 29503
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252.227–7013 Revised 33490
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252.227–7014 Added 33493
252.227–7015 Added 33497
Amended 61602
252.227–7016 Added 33498
252.227–7017 Added 33498
252.227–7018 Revised 33499
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252.227–7019 Revised 33503
252.227–7020 Revised 33504
252.227–7021 Introductory text revised 33504
252.227–7022 Introductory text revised 33504
252.227–7023 Introductory text revised 33505
252.227–7024 Introductory text revised 33505
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252.227–7027 Introductory text revised 33505
252.227–7028 Revised 33505
252.227–7029 Removed 33505
252.227–7030 Introductory text revised 33505
252.227–7031 Removed 33505
252.227–7032 Introductory text revised 33505
252.227–7033 Introductory text revised 33505
252.227–7036 Introductory text revised 33505
252.227–7037 Revised 33505
Amended 61602
252.228–7007 Added; interim 45377
252.231–7001 Removed 61602
252.235–7010 Added 29503
252.235–7011 Added 29503
252.237–7020 Removed 61602
252.237–7021 Removed 61602

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252.237–7022 Regulation at 59 FR 36090 confirmed 29496
Amended 29503
252.239–7010 Amended 61602
252.242–7001 Removed 61602
252.247–7021 Revised 29503
252.247–7023 Amended 61602
252.247–7024 Amended 61603
252.247–7025 Revised 29503
252.249–7002 Regulation at 59 FR 27677 confirmed 29497
Amended 29503
252.251–7000 Amended 29503
253 Authority citation revised 29497, 35868, 40106
253.204–70 (b)(13)(iv), (ix), (c)(4)(viii) and (d)(5)(iv)(A)(*2*) revised; (c)(4)(iii)(A)(*6*) added; (d)(5)(iv)(A)(*7*) removed 35868
Revised 61603
253.204–71 (e)(2)(i)(A)(*3*) revised 35869
Revised 61612
253.209–1 (a)(i)(E) revised 29504
253.215–70 Amended 29504
Chapter 2 Appendix C amended 29497, 29504
Appendixes A through I amended 40106
Appendixes C, F and G amended 61615
Appendix G amended 61620, 61623, 61626, 61627

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201.201–1 (d)(i) introductory text and (III) revised 50451
201.402 (2) revised 50451
202.101 Amended 7741, 50451
204.202 (1)(iii) and (iv) amended; (1)(v) added 7742
204.670–1 (c) revised 51030
204.670–2 (d) introductory text, (1) and (7)(iii) revised 51030
204.670–3 (a)(1), (2) introductory text, (5) and (b)(2) revised; (b)(1) amended 51030
204.670–5 Revised 51030
204.670–6 Heading, (b)(1)(iii), (iv), (v), (2) and (c)(1) revised 51031
204.670–8 Revised 51031
204.670–9 Heading and (b) revised 51031
204.7003 (a)(1)(i)(F) amended 50451

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204.7201 (b) revised 51031
204.7202–1 (a) amended 51031
204.7202–2 Heading, (a) introductory text, (b)(1) introductory text, (i), (ii) and (2)(vi) revised 51031
204.7203 (a) and (b) revised; (e) removed 51031
204.7204–1 (b) amended 51031
204.7204–2 Heading revised 51031
204.7206 Introductory text revised 51032
206.304 Revised 10285
(a)(4)(B)(*2*) revised 50451
207.103 (h)(i)(B) amended 50451
207.104 Added 50451
207.105 Introductory text revised; (b)(12), (15) and (17) redesignated as (b)(13), (16) and (18); (a)(8), new (b)(13)(iv), new (16) and new (18)(A)(*1*)(*ii*) amended; (b)(18)(D) added 50451
207.470 Revised; interim 16879
Regulation at 61 FR 16879 confirmed 50450
(b) revised 50452
209.103 (c) added 50452
209.103–70 Amended 50452
209.403 (1) amended 50452
209.470 Regulation at 60 FR 13074 confirmed 7741
209.470–1 Regulations at 60 FR 13074 and 61593 confirmed 7741
Revised 7742
Revised; interim 25408
209.470–2 Regulation at 60 FR 13074 confirmed 7741
Revised; interim 25408
209.470–3 Regulations at 60 FR 13074 and 61593 confirmed 7741
212.301 (f)(i) removed; (f)(ii), (iii) and (iv) redesignated as (f)(i), (ii), and (iii); new (f)(ii) amended 50452
212.504 (a)(xix), (xx) and (xxi) removed 58488
213 Heading revised 7742
213.000 Amended 7742
213.101 Amended 7742
213.204 (b) amended 7742
213.401 Redesignated from 213.402 7742
213.402 Redesignated as 213.401; new 213.402 redesignated from 213.403 7742

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213.403 Redesignated as 213.402; new 213.403 redesignated from 213.404; (c)(i)(B) and (ii) amended 7742
213.404 Redesignated as 213.403 7742
213.505–1 Redesignated from 213.505–2; heading revised; introductory text, (b)(i) introductory text and (F)(*3*) amended 7742
213.505–2 Redesignated as 213.505–1 7742
Corrected 9532
213.505–3 (b)(1) introductory text revised 7742
(b)(1) corrected 18195
213.507 Heading and (a)(i) revised 7742
214.406–3 (e)(i) and (vi) amended 50452
215.605 Heading, (b)(ii)(B) and (E) revised; (b)(iv) added 18687
(b) revised 50452
215.608 (a) redesignated as (a)(1); (a)(2) added 18687
215.810 Revised 7742
215.810–2 Added 7742
215.810–3 Added 7743
(b)(i)(A) corrected 18195
216.306 Added 7743
(c)(i)(C)(iii) corrected 18195
216.603–4 Revised 7743
216.703 (c) revised 7743
(c) corrected 18195
217.202 (3) added 7743
217.7402 Introductory text amended; (b) revised 7743
217.7404–3 (a) introductory text amended 7743
217.7406 Revised 7743
219 Heading revised 18687
Heading revised; interim 39900
219.602–1 Regulation at 60 FR 40107 confirmed 61591
219.702—219.708 (Subpart 219.7) Heading revised 50452
219.702 (a) introductory text revised; interim 39900
Heading corrected 49008
219.703 (a) corrected 50535
219.704 (a)(4) added 18687
219.708 (b)(1)(A), (B) and (c)(1)(A) revised; interim 39901
219.1006 (b)(1)(B) revised 18687
219.7001 (a) revised 18687

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219.7104 (b) amended 54346
219.7200—219.7204 (Subpart 219.72) Added 18688
219.7201 Amended 50452
223.570—223.570–4 (Subpart 223.5) Regulation at 57 FR 32737 confirmed 50450
223.570–4 Regulation at 60 FR 61597 confirmed 50450
223.803 (Subpart 223.8) Added 50452
223.7200—223.7203 (Subpart 223.72) Added 7743
223.7203 Corrected 18195
225.402 (c) revised 130
(a) revised 7744
225.403 (g)(4) added; (m)(4) removed; interim 37841
(d)(1)(B)(*3*) amended 50453
225.403–70 Introductory text revised; interim 37841
225.408 Heading and (a)(2) revised 16880
225.970 (Subpart 225.9) Added 50453
225.7001 Revised; interim 10899
Regulation at 61 FR 10899 confirmed 50450
(a) revised 50453
225.7002–2 (e) and (f) revised 50453
225.7002–3 Revised 50453
225.7002–4 Removed 50453
225.7011–4 (b) introductory text amended 50453
225.7004 Removed 58489
225.7004–1 Removed 58489
225.7004–2 Removed 58489
225.7004–3 Removed 58489
225.7004–4 Removed 58489
225.7004–5 Removed 58489
225.7004–6 Removed 58489
225.7005 Added 58489
225.7007–4 Revised 58489
225.7010–3 Revised 58489
225.7012 Revised; interim 13107
Regulation at 61 FR 13107 confirmed 50450
225.7012–1 Revised; interim 13107
Regulation at 61 FR 13107 confirmed 50450
225.7012–2 Revised; interim 13107
Regulation at 61 FR 13107 confirmed 50450
225.7012–3 Revised; interim 13107
Regulation at 61 FR 13107 confirmed 50450
Heading revised; (1) and (2) redesignated as (a) and (b) 50453

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225.7012–4 Removed; interim 13107
Regulation at 61 FR 13107 confirmed 50450
225.7016–3 Revised 58489
225.7019 Revised; interim 10900
Regulation at 61 FR 10900 confirmed 50450
225.7019–1 Revised; interim 10900
Regulation at 61 FR 10900 confirmed 50450
(b) revised 58489
225.7019–2 Revised; interim 10900
Regulation at 61 FR 10900 confirmed 50450
Revised 50453
225.7019–3 Revised; interim 10900
Regulation at 61 FR 10900 confirmed 50450
(a)(2) introductory text revised; (a)(3) added 50453
225.7019–4 Revised; interim 10900
Regulation at 61 FR 10900 confirmed 50450
225.7022 Revised; interim 13107
Technical correction 16287
Regulation at 61 FR 13107 confirmed 50450
225.7022–1 Revised; interim 13107
Regulation at 61 FR 13107 confirmed 50450
225.7022–2 Revised; interim 13107
Regulation at 61 FR 13107 confirmed 50450
225.7022–3 Added; interim 13107
Regulation at 61 FR 13107 confirmed 50450
Revised 58489
225.7022–4 Added; interim 13107
Regulation at 61 FR 13107 confirmed 50450
225.7102 Introductory text revised 7744
Revised 50453
225.7103 (e)(1) revised; (e)(2) redesignated as (e)(3); new (e)(2) added 7744
Revised 50453
225.7104 Revised 50453
225.7303 Heading revised; interim 18987
Regulation at 61 FR 18987 confirmed 50450
Amended 50453
225.7303–2 (a)(3) revised 7744

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(a) introductory text and (c) introductory text revised; interim 18987
Regulation at 61 FR 18987 confirmed 50450
225.7303–5 Added; interim 18988
Regulation at 61 FR 18988 confirmed 50450
(c) corrected 49531
227.7004 (c)(6) amended 50454
227.7009–1 (a) removed; (b) through (f) redesignated as (a) through (e); new (d) amended 50454
228.106–4 Removed 7744
228.106–4–70 Removed 7744
228.106–6 Removed 7744
228.171 Removed 50454
228.171–1 Revised; interim 3601
Removed 50454
228.171–2 (a) revised; interim 3601
Removed 50454
228.171–3 Revised; interim 3601
Removed 50454
228.311–1 Removed; new 228.311–1 redesignated from 228.311–2 50454
228.311–2 Redesignated as 228.311–1 50454
228.370 Heading revised 50454
231.205–6 (f)(1) added; interim 7077
(a)(2) revised; interim 36306
Regulation at 61 FR 7077 confirmed 50450
(a)(2) and (f)(1) amended 50454
(f)(1) revised; interim 58490
(a)(2)(i) and (ii) redesignated as (a)(2)(i)(A) and (B); new (a)(2)(ii) added; interim 65479
231.205–70 Revised 16881
(b)(3) corrected 49531
(d)(2) amended 50454
(a) revised; (c)(3) and (d)(10) added; interim 64635
231.205–71 Added; interim 21975
(b) amended 50454
231.303 (3) revised; interim 36306
231.603 Revised; interim 36306
231.703 Revised; interim 36306
232.501–1 Regulation at 58 FR 62046 confirmed 7741
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235.7002 (a)(4) amended 50454
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242.803 (b)(i)(C) and (D) redesignated as (b)(i)(D) and (E); new (b)(i)(C) added 25409
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